

P.O. BOX 5246 - CSATH/SP-CI-132L
CORCORAN, CALIFORNIA 93212

EXHIBIT A PAGES 1-120

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

BEFORE: ALLAN J. PRECKEL

DEPT. 12

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)
PLAINTIFF,)
VS.)
ERIC BURTON,)
DEFENDANT.)

CASE NO. SCE 238643
(MARSDEN HEARING)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

NOVEMBER 5TH, 2004
EL CAJON, CALIFORNIA

APPEARANCES:

FOR THE PEOPLE:

BONNIE DUMANIS
DISTRICT ATTORNEY
BY: JORGE JARAMILLO
DEPUTY D.A.

FOR THE DEFENDANT:

LEE PLUMMER
ATTORNEY AT LAW

BOB CARLUCCI, C.S.R.
OFFICIAL REPORTER
SUPERIOR COURT
EL CAJON, CALIFORNIA

1 DID, HE SUBMITTED THE FIRST MOTION IRRESPECTIVE OF MYSELF.
2 I RECEIVED THE MOTION IN THE INMATE MAIL AFTER IT WAS
3 SUBMITTED, I THEN AGAIN AFTERWARDS BEGAN TO DETECT ERRORS IN
4 IT.

5 THERE IS ONE SPECIFIC ERROR, ACCORDING TO THIS
6 SAN DIEGO SUPERIOR COURT RULES, PERTAINING TO THE 1538.5. I
7 SHOULD ADD THE MOTION SHALL INCLUDE A LIST OF ITEMS TO BE
8 SUPPRESSED. A GENERAL REQUEST TO SUPPRESS ALL ITEMS SEIZED
9 IS NOT SUFFICIENT AND WILL BE DEEMED AN ABANDONMENT OF THE
10 MOTION. ONLY LISTED ITEMS WILL BE CONSIDERED BY THE COURT
11 FOR SUPPRESSION OR RETURN, [REDACTED]

12 [REDACTED]
13 NOW, I SPECIFICALLY ASKED MY ATTORNEY WHEN HE
14 VISITED ME, "DON'T YOU HAVE TO LIST THESE ITEMS ON HERE THAT
15 WE WANT SUPPRESSED?" HE TOLD ME NO, ALL ITEMS SEIZED WILL
16 SUFFICE. [REDACTED]

17 WE ALSO HAD A PROBLEM WITH THIS 1538.5. THE
18 FACT IS THAT AFTER NUMEROUS TIMES AFTER I INDEPENDENTLY DID
19 MY OWN RESEARCH AND HAD LEARNED [REDACTED] THAT
20 AFTER I IMPLEMENTED MY 6TH AND MY 5TH AMENDMENT RIGHTS, THAT
21 ONCE THE OFFICER INITIATED CONVERSATION, THE INTERROGATION
22 WAS SUPPOSED TO STOP. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

27 I LATER FOUND OUT THAT A MOTION COULD HAVE BEEN
28 MADE DURING THE PRELIMINARY HEARING TO SET FORTH THE

1 LITIGATION OF THE VALIDITY OF THESE SEIZURES. SO COUNSEL,
2 IN A SENSE -- I DON'T WANT TO BE HARSH AND SAY LIED TO ME,
3 BUT HE DECEIVED ME AND HE CAME TO VISIT ME AND WE HAD A
4 CONVERSATION AND I ASKED HIM AGAIN, "IS THERE ANYTHING I CAN
5 DO PRIOR TO TRIAL TO SUPPRESS THIS EVIDENCE THAT WAS
6 UNLAWFULLY OBTAINED, INCLUDING MY ARREST," BECAUSE IN THE
7 BEGINNING, AS I SAID, THERE WAS A MIRANDA VIOLATION. I
8 SHOULD HAVE BEEN MIRANDIZED WHEN THE OFFICER BEGAN ASKING ME
9 THAT DIRECT INCRIMINATING QUESTION, [REDACTED]"

10 ALSO, HE ENTERED MY APARTMENT UNLAWFULLY IN
11 VIOLATION OF 4TH AMENDMENT [REDACTED]
12 ATTORNEY HAD TOLD ME NUMEROUS TIMES THAT THERE'S NOTHING YOU
13 CAN DO UNTIL TRIAL.

14 OKAY. [REDACTED]
15 WORKED INDEPENDENT OF HIM BECAUSE ALSO HE IS NOT GATHERED,
16 IN SEVEN MONTHS, ANY EXCULPATORY EVIDENCE. I DO NOT HAVE
17 HARD DISCOVERY. EACH TIME I'VE COME TO COURT I HAVE NOT
18 RECEIVED A RECEIPT FROM THE COURTS THAT I HAVE BEEN TO
19 COURT. [REDACTED]

20 [REDACTED]. I HAVE INEFFECTIVE COUNSEL, AND THE CONSTITUTION
21 OF THE UNITED STATES, OF THE 6TH AMENDMENT GUARANTEES ME THE
22 RIGHT TO HAVE EFFECTIVE COUNSEL, AND BEING CHARGED WITH A
23 FELONY AND SO SAID THAT I AM, [REDACTED]
24 EVERY LEVEL OF THESE PROCEEDINGS AND TRIAL. [REDACTED]

26 [REDACTED]
27 COUNSEL, AS GUARANTEED BY MY RIGHTS AS THE ACCUSED BY THE
28 CONSTITUTION OF THE UNITED STATES.

1 1538 AT HIS REQUEST BECAUSE SOME OF OUR DISCUSSIONS -- SOME
2 DIFFERENT THINGS CAME UP IN CONNECTION WITH THE FACTS OF THE
3 CASE.

4 I ALSO FILED DISCOVERY MOTIONS ON HIS BEHALF
5 [REDACTED]
6 FILED AN INFORMAL REQUEST AND A MOTION FOR DISCOVERY.

7 THE FACT OF THE MATTER IS THAT MR. BURTON
8 [REDACTED] HE THINKS I'M NOT ADEQUATELY REPRESENTING
9 [REDACTED]
10 APPROPRIATE DEFENSE FOR HIM. [REDACTED]

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 I THINK HE HASN'T REQUESTED A NEW ATTORNEY
17 BEFORE. HE DID HAVE P.D. AND AN A.P.D. BRIEFLY, BUT THEY
→ 18 CONFLICTED OFF OF HIM BECAUSE OF THEIR REPRESENTATION OF
19 SOME OF WITNESSES IN THIS CASE AND I WAS APPOINTED. SO THIS
20 IS HIS FIRST REQUEST FOR A NEW ATTORNEY.

21 I THINK HE DESERVES A CHANCE TO GET A NEW
22 ATTORNEY AND TO WORK WITH SOMEBODY THAT HE HAS CONFIDENCE IN
23 AND CAN HELP HIM LITIGATE THIS CASE. IT IS A VERY, VERY
24 IMPORTANT CASE TO HIM. I MEAN, HE'S FACING A SUBSTANTIAL
25 PERIOD OF TIME IN PRISON, IF NOT THE REST OF HIS LIFE, AND
26 HE UNDERSTANDS THAT AND HE'S UNDERSTANDABLY CONCERNED ABOUT
27 THAT AND UNDERSTANDABLY HE HAS SOME CONCERNS ABOUT MY
28 REPRESENTATION OF HIM. SO I WOULD JOIT IN HIS REQUEST THAT

1 ARE YOU PREPARED TO WAIVE YOUR SPEEDY TRIAL
2 RIGHTS?

3 THE DEFENDANT: NO, I'M NOT PREPARED TO WAIVE MY
4 RIGHTS TO A SPEEDY TRIAL.

5 THE COURT: WELL, THEN THE COURT IS NOT PREPARED
6 TO SIMPLY JOIN IN MR. PLUMMER'S ACQUIESCENCE TO YOUR MOTION
7 FOR NEW COUNSEL. [REDACTED]

[REDACTED]

[REDACTED]

12 I'VE REVIEWED THE 1538.5 MOTION TO SUPPRESS
13 PHYSICAL EVIDENCE. [REDACTED]

14 [REDACTED]

15 PARENTHETICALLY, YES, IT COULD HAVE BEEN BETTER
16 DELINEATED WITH GREATER SPECIFICITY WHAT ITEMS WERE SOUGHT
17 TO BE SUPPRESSED, BUT --

[REDACTED]

19 THE COURT: -- THAT SHORTCOMING WOULD NOT
20 OCCASION THE OUTRIGHT DENIAL OF THE MOTION OR OF ANY COURT
21 REFUSING TO HEAR THE MOTION ON ITS MERITS.

[REDACTED]

23 THE COURT: SO THE ONLY REASON THAT I WOULD
24 GRANT YOUR REQUEST IS, [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED], THERE'S A BREAKDOWN
28 OF THE ATTORNEY/CLIENT RELATIONSHIP. BUT IF YOU THINK THAT

1 I'M GOING TO GRANT YOUR REQUEST FOR NEW COUNSEL AND THEN
2 HAVE THAT NEW ATTORNEY FORCED TO TRIAL ON DECEMBER 6TH, A
3 MONTH FROM NOW, GIVEN THE PARAMETERS OF THIS CASE AND THESE
4 CHARGES AND THESE ALLEGATIONS SO THAT BY SO DOING YOU CAN
5 TRY AND SET UP AN ARGUMENT ON APPEAL THAT ONCE AGAIN YOU
6 WERE DEPRIVED OF EFFECTIVE COUNSEL BECAUSE COUNSEL WAS
7 FORCED TO GO TO TRIAL FASTER THAN WOULD OR SHOULD HAVE BEEN
8 THE CASE HAD YOU WAIVED YOUR SPEEDY TRIAL RIGHTS AND ALLOWED
9 COUNSEL TO MORE FULLY INVESTIGATE OR PREPARE THE CASE, SO
10 YOU'RE NOT GOING TO HAVE YOUR CAKE AND EAT IT, TOO, IS WHAT
11 I'M TELLING YOU.

12 THE DEFENDANT: OKAY. YOUR HONOR, I HAVE ONE
13 OTHER STATEMENT TO MAKE.

14 THE COURT: WHICH IS WHAT?

15 THE DEFENDANT: [REDACTED]
16 TRIAL DUE TO THE FACT THAT THE MEDICATION I'VE BEEN ON FOR
17 12 YEARS TO MONITOR MY GLAUCOMA MAY HAVE TOXIC LEVELS IN MY
18 BLOODSTREAM, AND THESE TOXIC LEVELS HAVE ADVERSE REACTIONS
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

28

THE COURT: SO WHAT ARE YOU TELLING ME OR

1 ASKING?

2 THE DEFENDANT: I'M SAYING -- I'M ASKING THAT
3 BLOOD LEVELS BE DRAWN TO DETERMINE WHETHER OR NOT I HAVE
4 TOXIN LEVELS OF CHEMICALS THAT I TAKE TO MONITOR MY
5 END-STAGE GLAUCOMA FOR WHICH THERE IS NO CURE THAT I HAVE TO
6 CONTINUOUSLY BE ON THESE MEDICATIONS TO MAINTAIN MY
7 INTEROCULAR PRESSURE. I HAVE HIGH PRESSURES AND THERE ARE
8 ADVERSE REACTIONS TO THESE MEDS THAT MAY BE PRESENT IN MY
9 BLOODSTREAM.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19 THE COURT: SPELL THAT ONE.

20 THE DEFENDANT: A-L-P-H-A-G-A-N. AND I BELIEVE
21 ZYLATAN, Z Y-L-A-T-A-N. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

26 THE COURT: ALL RIGHT. SO NOTED, AT LEAST YOUR
27 STATEMENTS ARE NOTED.

28 THE COURT DECLINES THE REQUEST TO UNDERTAKE ANY

SO LET'S RETURN TO WHAT WE WERE ADDRESSING
HERETOFORE, MR. BURTON, AND THAT BEING IF THE COURT APPOINTS
NEW COUNSEL TO REPRESENT YOU, AS SURE AS I KNOW THIS
BUSINESS, AND I HAVE BEEN DOING IT FOR A WHILE, THAT
ATTORNEY IS GOING TO COME IN AND ASK FOR ADDITIONAL TIME FOR
TRIAL IN ORDER TO ADEQUATELY DEFEND YOU.

THE COURT: ALL RIGHT. THEN WITH THAT

[REDACTED], THE COURT AT

1 THIS TIME WILL RELIEVE MR. PLUMMER AS APPOINTED COUNSEL OF
2 RECORD FOR MR. BURTON.

3 MR. PLUMMER, I'M GOING TO SET A HEARING DATE
4 NEXT WEEK, EITHER NEXT TUESDAY OR WEDNESDAY, AT 8:30 IN THE
5 MORNING, AND THE PURPOSE OF THAT WILL BE TO HAVE HOPEFULLY
6 NEW COUNSEL PRESENT AT THAT TIME TO ACCEPT THE APPOINTMENT

10 ARE YOU AVAILABLE EITHER TUESDAY OR WEDNESDAY
11 MORNING?

12 MR. PLUMMER: YES. TUESDAY, THE 9TH, WOULD BE
13 FINE, YOUR HONOR.

14 THE COURT: ALL RIGHT. THEN TUESDAY, NOVEMBER
15 9TH. IT WILL BE AT 8:30 IN THE MORNING IN THIS DEPARTMENT.

16 THE CLERK WILL PROMPTLY NOTIFY P.C.C. THIS
17 AFTERNOON OF THE NEED FOR A NEW CATEGORY 5 OR LEVEL 5
18 ATTORNEY FOR MR. BURTON, WITH THAT ATTORNEY TO BE PRESENT AS
19 WELL AT 8:30 IN THE MORNING ON TUESDAY, NOVEMBER 9TH. ALL
20 RIGHT.

21 MR. PLUMMER, THANK YOU. MR. BURTON, THANK YOU
22 FOR THE MANNER WHICH YOU HAVE PRESENTED YOUR CAUSE TO THE
23 COURT THIS AFTERNOON. WE'LL SEE YOU BACK TUESDAY MORNING.

25 MR. PLUMMER: THANK YOU, YOUR HONOR.

26 THE COURT: THANK YOU.

27 ---

28

9

SCE238643 People vs. Burton, Eric

3-16-05 0348

[REDACTED]

The defense makes a motion to suppress defendant's ^{ALLEGED} admissions [REDACTED].

The motion is

DENIED.

→ The defendant makes a motion to invoke his 6th amendment right to represent himself and also requests a Marsden motion. The Court will address the defendant's motion after the in limine motions have been completed.

[REDACTED]

The defense makes a motion to dismiss the case because one of the witnesses (child) was present at the preliminary hearing and feels that her mother's testimony during that hearing may sway the child's testimony during the trial. This motion is **DENIED.**

Defense motion to dismiss because the defense feels the charges have not been substantiated. This motion is **DENIED.**

The defense makes a motion for a change of venue due to pretrial publicity. This motion is **DENIED.**

The defense makes a motion that Mr. Thomas not be referred to as the victim during the trial and should be referred to by proper name. This motion is **DENIED.**

3:00 pm Court is in recess.

3:20 pm Court is again in session. Attorney Adair, the defendant and court staff is present. Court conducts a Marsden Hearing. This motion is **DENIED.** The Court orders the transcript of this hearing be sealed.

4:07 pm The Court instructs the clerk to contact Deputy District Attorney Maria Hannah to return to the courtroom to address another motion.

4:09 pm Court is in recess.

4:12 pm Court is again in session with Deputy District Attorney Maria Hannah, Attorney Adair and defendant present.

[REDACTED] This motion continues to be reserved until 3-23-05. [REDACTED]

SCE238643 People vs. Burton, Eric

3-16-05

4:20 pm The Court instructs counsel to return on March 23, 2005 at 8:45 am in department 100 349.

The defendant is remanded to custody with bail set at \$500,000.00. The defendant is ordered to be produced on 3-23-05 at 9:00 am in department 10.

4:25 pm Court is adjourned.

-nk-



IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO
CENTRAL DIVISION

DEPARTMENT 10

BEFORE HON. LAURA W. HALGREN, JUDGE

PEOPLE OF THE STATE OF
CALIFORNIA,

PLAINTIFF,

VS.

ERIC BURTON,

DEFENDANT.

NO. SCE 238643

(IN LIMINE MOTIONS)

REPORTER'S TRANSCRIPT

WEDNESDAY, MARCH 16, 2005

THURSDAY, MARCH 24, 2005

APPEARANCES :

FOR PLAINTIFF:

DISTRICT ATTORNEY'S OFFICE
BY: S. MARIA HANNAH, ESQ..
250 EAST MAIN
EL CAJON, CALIFORNIA 92020

FOR DEFENDANT:

LAW OFFICES OF CHARLES H. ADAIR
BY: CHARLES H. ADAIR, ESQ.
533 "F" STREET, SUITE 212
SAN DIEGO, CALIFORNIA 92101

TAMELA ERVIN, RPR, CSR NO. 9685
OFFICIAL COURT REPORTER
SAN DIEGO, CALIFORNIA

PAC 12

16 MARCH 05

1

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7

9

MS. HANNAH: OKAY.

10

11

12

13

14

15

16

17

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19

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21

MR. ADAIR: CERTAINLY, YOUR HONOR.

YOUR HONOR, MY CLIENT WISHES TO ADDRESS THE COURT.

THE COURT: WELL, SIR, ON WHAT ISSUE?

THE DEFENDANT: AT THIS TIME, YOUR HONOR, I WOULD LIKE TO

MARCH 16

1 INVOKE MY SIXTH AMENDMENT RIGHTS TO REPRESENT MYSELF AS
2 COUNSEL.

3 THE COURT: ALL RIGHT. SIR, I'LL TAKE THAT UP IN A
4 MOMENT. I WANT TO FIRST DEAL WITH THE ISSUES THAT ARE ON
5 CALENDAR FOR TODAY.

6 I KNOW OVER THE COURSE AND THE HISTORY OF THIS CASE,
7 ISSUES LIKE THAT HAVE BEEN RAISED BEFORE. SO I'LL SET ASIDE
8 TIME AT THE END OF TODAY'S HEARING TO HEAR THOSE FROM YOU.

9 ALL RIGHT. AND THEN IF I GRANT YOUR MOTION, YOU
10 WILL HAVE THE OPPORTUNITY TO ADDRESS ANYTHING WE'VE ADDRESSED.

11 THE DEFENDANT: EXCUSE ME. I WOULD LIKE A MARSDEN [REDACTED]

12 THE COURT: ALL RIGHT. WE'LL DO THAT, TOO. [REDACTED]

13 THEN THE NEXT ISSUE RAISED BY THE DEFENSE BRIEF
14 RELATES TO EXCLUSION OF EVIDENCE. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19 THE COURT: ALL RIGHT. SO I'VE READ THOSE ARGUMENTS.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6 THE COURT: ALL RIGHT. WELL, I UNDERSTAND YOUR ARGUMENT.
7 AND IT'S DENIED, WITH THE GUIDANCE I'VE GIVEN, THAT I DON'T
8 EXPECT THE TERM TO BE USED IN AN INFLAMMATORY WAY.

9 I EXPECT BOTH ATTORNEYS WILL, AS REASONABLY AS
10 POSSIBLE, REFER TO PEOPLE AS THEIR NAMES. AND AGAIN, IF FROM
[REDACTED]

12 MISCONDUCT. BUT SIMPLY EVERYONE SHOULD USE THEIR GOOD JUDGMENT
13 IN PRESENTING THE CASE TO THE JURY. I DON'T AT THIS POINT SEE A
14 REASON TO GRANT THAT MOTION.

15 OKAY. ANYTHING ELSE THAT WE NEED TO ADDRESS? AND
16 IF NOT, WHAT I'LL BE DOING IS EXCUSE MS. HANNAH -- TAKE A BREAK
17 AT THIS POINT AND THEN RESUME WITH JUST MR. ADAIR AND MR. BURTON
18 SO WE CAN DEAL WITH ISSUES RELATED TO THE MARSDEN MOTION.

19 ANYTHING ELSE?

20 MS. HANNAH: I DON'T THINK SO.

21 THE COURT: OKAY. THEN I WILL BE EXPECTING COUNSEL TO
22 REPORT HERE -- LET'S SEE. IF WE'RE GOING TO WANT TO GET STARTED
23 WITH THE PANEL, THEY WON'T BE READY UNTIL 9:15. THERE MAY HAVE
24 BEEN ISSUES THAT WOULD HAVE DEVELOPED BETWEEN NOW AND THEN. SO
25 I'D PROBABLY LIKE YOU HERE AT 8:45, ON WEDNESDAY --

26 MS. HANNAH: OKAY.

27 THE COURT: -- THE 23RD.

28 MS. HANNAH: OKAY. [REDACTED]

(15)

[REDACTED]

4 THE COURT: OKAY. VERY GOOD. WE'LL BE IN RECESS FOR 15
5 MINUTES.

[REDACTED]

8 (PAGES 181 THROUGH 206 HAVE BEEN ORDERED SEALED BY
9 THE COURT AND APPEAR IN A SEPARATE SEALED VOLUME NO. 2A.
10 UNSEALED PROCEEDINGS CONTINUE ON PAGE 207; [REDACTED])
11
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1 SAN DIEGO, CALIFORNIA; WEDNESDAY, MARCH 16, 2005; P.M. SESSION

2
3 (THE FOLLOWING PROCEEDINGS, PAGES 181 THROUGH 206, WERE
4 ORDERED SEALED BY THE COURT.)
5

6 THE BAILIFF: PLEASE REMAIN SEATED AND COME TO ORDER.
7 DEPARTMENT 10 IS IN SESSION.

8 THE COURT: OKAY. WE ARE BACK ON THE RECORD IN THE BURTON
9 MATTER. AND THE COURTROOM HAS BEEN CLOSED. THE PROSECUTOR HAS
10 LEFT. WE ONLY HAVE PRESENT MR. BURTON AND HIS COUNSEL AND
11 COURTROOM STAFF.

12 MR. BURTON, I UNDERSTAND THAT YOU WANTED TO RAISE A
13 MARSDEN MOTION; IS THAT CORRECT?

14 THE DEFENDANT: YES, YOUR HONOR.

15 THE COURT: OKAY. WHAT IS THE -- WELL, LET ME FIRST
16 REVIEW WITH YOU. I BELIEVE IN THE PAST YOU HAD A MARSDEN
17 HEARING, BUT NOT IN FRONT OF ME. SO I WANTED TO JUST MAKE SURE
18 YOU UNDERSTAND, BECAUSE IT'S A CLOSED HEARING, ANY STATEMENTS
19 THAT YOU MAKE WOULD BE HELD IN CONFIDENCE AND NOT DIVULGED TO
20 THE PROSECUTOR.

21 ADDITIONALLY, WHEN WE'RE DONE WITH THIS, THIS
22 PORTION OF THE TRANSCRIPT WILL BE ORDERED SEALED, SO IT'S NOT
23 PART OF THE PUBLIC RECORD. AND THAT WOULD ONLY BECOME AVAILABLE
24 TO OTHER COUNSEL OR PARTIES IF A MOTION IS MADE TO THE COURT.

25 THE DEFENDANT: YES, YOUR HONOR.

26 THE COURT: SO DO YOU UNDERSTAND THAT, SIR?

27 THE DEFENDANT: YES, YOUR HONOR.



[REDACTED]

4 THE COURT: OKAY. AND DO YOU FEEL THAT MR. ADAIR HAS NOT
5 PROPERLY REPRESENTED YOU?

[REDACTED]

7 THE COURT: AND WHY DO YOU FEEL THAT WAY?

8 THE DEFENDANT: WELL, THERE'S BEEN A BREAK IN THE
9 ATTORNEY/CLIENT PRIVILEGE. [REDACTED]

[REDACTED]

11 [REDACTED], I HAD CALLED HIS
12 OFFICE, REQUESTING TO SEE HIM, BECAUSE I HAD SOME INFORMATION
13 FOR HIM ON SOME MATTERS PERTAINING TO MY CASE.

14 HOWEVER, [REDACTED], A WOMAN SHOWED UP,
15 ATTEMPTING TO INTERVIEW ME AND STATING THAT HER CAPACITY WAS
16 SOME SORT OF PSYCHIATRIST OR WHATEVER. I REFUSED THE INTERVIEW

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

22 LAW. AND I FELT THAT I WAS VIOLATED AS FAR AS MY RIGHT TO
23 PRIVACY AND MY ATTORNEY/CLIENT PRIVILEGE WAS VIOLATED BY THIS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9

THE DEFENDANT: [REDACTED]

[REDACTED]

12

ASSUMING I WOULD HAVE A VISIT WITH MR. ADAIR. QUITE TO MY

13

SURPRISE, IT WAS BY SOMEONE THAT WAS NOT MY ATTORNEY.

14

THE COURT: LET ME MAKE SURE I UNDERSTAND.

[REDACTED]

[REDACTED]

[REDACTED]

19

THE COURT: OKAY. NOW, [REDACTED]

20

TELL ME SOMETHING ELSE BEYOND THIS VIOLATION OF ATTORNEY/CLIENT

21

PRIVILEGE. [REDACTED]

[REDACTED]

24

* THE COURT: IT'S NOT A CAPITAL CASE.

25

THE DEFENDANT: WELL, IT HAS TO DEAL WITH THE REST OF MY

26

LIFE. AND I FEEL THAT TIME AND EFFORTS NEEDED TO TAKE PLACE AS

27

FAR AS PUTTING THIS CASE TOGETHER AS FAR AS STRATEGY. [REDACTED]

28

-- I FEEL AS THOUGH THAT HAS NOT BEEN DONE. I FEEL THAT

16 MAR 2008

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1 THERE'S A CONFLICT OF INTEREST HERE. AND IT HAS BEEN FROM THE
2 VERY BEGINNING. I HAVE EVIDENCE HERE THAT YOU CAN LOOK AT IF
3 THE BAILIFF CAN TAKE THIS.

4 THE COURT: SURE. I'LL TAKE A LOOK AT THAT.

5 THE DEFENDANT: AND I HAVEN'T HAD ADEQUATE PRO VISITS.

6 THE COURT: WHAT KIND OF VISITS?

7 THE DEFENDANT: [REDACTED] I
8 HAVEN'T HAD THE VISITS, AS FAR AS DISCUSSING THE CASE. [REDACTED]

10 EFFORTS IN RETRIEVING CERTAIN THINGS.

11 THE COURT: CAN YOU BE MORE SPECIFIC?

12 THE DEFENDANT: YES. [REDACTED]

14 MR. THOMAS VIA MY CELL PHONE. BECAUSE MY DAUGHTER WOULD CALL ME
15 ON MY CELL PHONE, AND HE CALLED, THREATENING ME. AND I ASKED

17 RETRIEVE AND REVIVE THOSE MESSAGES, WHICH WOULD SUPPORT MY
18 CASE. BECAUSE --

19 THE COURT: LET ME MAKE SURE I UNDERSTAND. THE -- THERE
20 WERE CALLS MADE TO YOUR CELL PHONE. --

21 THE DEFENDANT: YES. *failure to investigate lead*

24 THE COURT: AND THEN AT SOME POINT YOU ASKED THE DEFENSE

26 THE DEFENDANT: RIGHT. THE PHONE NUMBER IS AREA CODE

27 619-253-1895. IT'S A SPRINT PHONE. SPRINT PCS.

(20)

1 [REDACTED]
2 THE DEFENDANT: YES. I ALSO HAVE MY DAUGHTER RECORDED ON
3 THERE, ALSO, BECAUSE THEY TRIED TO MAKE ME SEEM AS IF I'M SOME
4 SORT OF ESTRANGED FATHER.

5 THE COURT: OKAY. WHAT ELSE DID YOU ASK THE INVESTIGATOR
6 TO DO BESIDES THE -- WAIT. I WE JUST GOT TO MAKE A GOOD RECORD.

7 THE DEFENDANT: I'M SORRY.

8 THE COURT: I WANT TO MAKE SURE I UNDERSTAND YOUR
9 COMPLAINTS.

10 THE DEFENDANT: OKAY.

11 THE COURT: NUMBER ONE, [REDACTED]
12 FOLLOW UP ON THE THREATS ON YOUR CELL PHONE, [REDACTED]

14 THE DEFENDANT: YES. GET IT REVIVED OR SOMETHING.

15 THE COURT: WHAT WAS THE NEXT CONCERN YOU HAD?

16 THE DEFENDANT: THE NEXT CONCERN THAT I'VE HAD -- THAT

18 THE TIME OF MY ARREST. AND THE POLICE DID NOT ALLOW ME TO CALL
19 MY ATTORNEY, AFTER BEING THERE FOR THREE HOURS.

20 THE COURT: WHAT I NEED YOU TO FOCUS ON IS MR. ADAIR,
21 NOT --

22 THE DEFENDANT: YES, MA'AM. AND THE POINT THAT I WAS
23 MAKING WAS THAT I DID NOT MEET WITH ANY ATTORNEY UNTIL 14 DAYS
24 AFTER MY ARREST. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

3 THE COURT: SO WHAT EXACTLY IS IT THAT MR. ADAIR HASN'T
4 DONE THAT YOU THINK IS WRONG?

5 THE DEFENDANT: THE THING IS I WANTED SOME SORT OF
6 FORENSIC TESTING OF WHERE YOU SWEEP THE AREA SO YOU CAN
7

8
9 THE COURT: IS THIS SOMETHING YOU HAD ASKED YOUR EARLIER
10 ATTORNEYS TO DO?

11 THE DEFENDANT: I ASKED BOTH ATTORNEYS.

12 THE COURT: HOW MANY ATTORNEYS HAVE YOU HAD?

13 THE DEFENDANT:

14 ONE WAS MR. NEWTON,

15 AND SO IT WAS A CONFLICT. BECAUSE
16
17
18

19 HIMSELF DUE TO A CONFLICT OF INTEREST.

20 THE COURT: WAS MR. PLUMMER RELIEVED BASED UPON A MOTION
21 YOU MADE?

22 THE DEFENDANT: BECAUSE MR. --

23 THE COURT: SO THEN AFTER MR. PLUMMER, MR. NEWTON, WHO DID
24 YOU HAVE NEXT?

25 THE DEFENDANT: THE FIRST ONE WAS MR. VIC
26 ERICSEN, BUT I NEVER MET WITH HIM.

27 HE HAD A CONFLICT OF INTEREST BECAUSE HE REPRESENTED
28 MR. THOMAS IN THE PAST. THEN THERE WAS MR. PLUMMER, THEN THERE

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9 THE COURT: OKAY. ANY OTHER COMPLAINTS ABOUT THE DEFENSE
10 OF YOUR CASE?

11 THE DEFENDANT: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

17 BE IN JAIL HERE FOR ONE YEAR, [REDACTED]
18 WITHOUT PROBABLE CAUSE.

19 THE COURT: [REDACTED], THE SUPPRESSION MOTION, WHAT
[REDACTED]

21 THE DEFENDANT: [REDACTED], DUE TO THE FACT THAT MY
22 DAUGHTER DREONA BURTON WAS ALSO A PROTECTED PERSON ON THE
23 RESTRAINING ORDER. [REDACTED]

24 [REDACTED] HEARING, HE CALLED HER -- REFERRED TO HER -- [REDACTED]
25 [REDACTED] BUT HE WAS YELLING AND
26 EVERYTHING. WITNESSES WERE NOT SEPARATED.

27 THE COURT: [REDACTED] THE MOTION --

28 THE DEFENDANT: THE MOTION AS FAR AS DISMISS DUE TO
29

1 DISSUADING OF A WITNESS. MY DAUGHTER, BECAUSE SHE WAS ALSO A
2 EQUAL PROTECTANT ON THAT ORDER, WHICH WAS VIOLATED.

3 THE COURT: ALL RIGHT. ANY OTHER MOTIONS YOU THOUGHT
4 SHOULD BE FILED?

5 THE DEFENDANT: YES. ALSO, THERE ARE FALSE STATEMENTS
6 THAT HAVE BEEN ENTERED INTO THE RECORD AS FAR AS ME ALLEGEDLY
7 [REDACTED], AS FAR AS THE MOTION THAT WAS WRITTEN TO
8 1538.5. [REDACTED] WERE
[REDACTED]
[REDACTED]

11 THE COURT: ALL RIGHT. IS THIS THE SAME ISSUE YOU HAD
12 RAISED TO JUDGE PRECKEL, WHERE THERE WAS CONCERN RAISED BY YOU
13 THAT THE STATEMENT OF FACTS DIDN'T FULLY SET FORTH THINGS
14 APPROPRIATELY?

15 THE DEFENDANT: WELL, WITH JUDGE PRECKEL --

16 THE COURT: I JUST WANT TO KNOW IF THAT'S THE SAME ISSUE
17 YOU'RE TALKING ABOUT?

18 THE DEFENDANT: [REDACTED] BUT I WAS DENIED MY
19 MARSDEN BY JUDGE PRECKEL. HE NEVER GAVE ME AN OPPORTUNITY TO
[REDACTED]

21 THE COURT: [REDACTED]

22 WHAT OTHER ISSUES ARE THERE BEYOND WHAT YOU'VE TOLD
23 ME HAVE NOT BEEN ADEQUATE BY THE DEFENSE?

24 THE DEFENDANT: THE FACTS OF THE CASE HAVE BEEN
25 MISSTATED. [REDACTED]

26 [REDACTED] -- I ASKED HIM TO FILE A MOTION WITH THE
27 JUDGE -- YOURSELF -- ORDERING PROSECUTION TO TURN OVER ALL
28 DISCOVERY BECAUSE MOTIONS THAT WERE FILED BY MR. PLUMMER JULY

[REDACTED]

3 [REDACTED]

4 TO COMPEL PROSECUTION TO TURN OVER ALL DISCOVERY.

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 THE COURT: I DO WANT TO NOTE, FOR THE RECORD, THE

15 DOCUMENT YOU HANDED TO ME WHEN YOU WERE TALKING ABOUT THE LADY

16 WHO CAME TO VISIT YOU IDENTIFIES HER AS CATHERINE DIFRANCESCA,

17 WHO THE COURT RECOGNIZES AS A PSYCHOLOGIST OR A PSYCHIATRIST WHO

18 DOES DO COURT-APPOINTED EVALUATIONS AND OTHERWISE. SO SHE DOES

19 APPEAR TO BE SOME TYPE OF MENTAL HEALTH EXAMINER. AND THE DATE

20 REFERENCED IS -- I'M NOT QUITE SURE HOW TO READ THIS DOCUMENT,

21 BUT IT LOOKS LIKE JANUARY 5TH OF '05, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

27 THE COURT: I'LL GIVE THIS BACK TO MR. ADAIR, BECAUSE HE

28 MAY BE ABLE TO INTERPRET IT, AND WE CAN AT LEAST PINPOINT THE

26

1 DATE. [REDACTED]

2 THE DEFENDANT: MY POINT IS I HAD ALREADY EXPRESSED, AS
3 FAR AS MY RIGHTS TO REFUSE

4 THE COURT: I DON'T NEED YOU TO REARGUE THE MOTION. [REDACTED]

5 [REDACTED] ABOUT NEEDING TO [REDACTED] TO FIGURE OUT THE DATE, [REDACTED] WE'RE ABLE TO DO

6 [REDACTED] FROM THAT DOCUMENT

7 THE DEFENDANT: YES, MA'AM.

8 MR. ADAIR: IT LOOKS LIKE 5 JANUARY, YOUR HONOR.

9 THE COURT: ALL RIGHT

10 OKAY. I'LL TAKE THAT BACK FOR THE MOMENT.

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 THE COURT: IS THAT SOMETHING YOU HAD ORIGINALLY ASKED

19 [REDACTED]

20 THE DEFENDANT: [REDACTED]

21 [REDACTED] EXTRAORDINARY WRIT OF MANDATE FOR REVIEW OF
22 THE 1538.5 MOTION. [REDACTED]

23 APPEALING JUDGE PRECKEL'S DECISION AS FAR AS HIS DENIAL OF
24 SUPPRESSING THE VEHICLE. BECAUSE THE VEHICLE WAS UNLAWFULLY
25 ENTERED, SEIZED AND REMOVED FROM MY RESIDENCE WITHOUT --

26 THE COURT: [REDACTED] THE WRIT OF
27 MANDATE FROM THE SUPPRESSION?

28 THE DEFENDANT: YES [REDACTED]

1 WHERE I'M TRYING TO PREPARE FOR TRIAL AND MAYBE GET THIS
2 DISMISSED BEFORE TRIAL. HE SEEMS TO ALREADY HAVE ME CONVICTED.

5 THE COURT: WHY DON'T I STOP YOU THERE SINCE YOU'VE GIVEN
6 ME THE LIST OF THE TYPE OF MOTIONS. I THINK WHAT I NEED TO DO
7 IS GIVE MR. ADAIR AN OPPORTUNITY TO EXPLAIN WHAT WORK HE HAS
8 DONE. LET ME JUST SEE IF THERE'S ANYTHING ELSE I WANTED TO ASK
9 YOU FIRST. LET'S DO THIS. LET ME ASK MR. ADAIR FIRST JUST TO
10 STATE FOR THE RECORD WHAT HIS EXPERIENCE IS IN CRIMINAL PRACTICE
11 SO I HAVE A LITTLE FRAME OF REFERENCE. TIME IN PRACTICE, YEARS,
12 TYPES OF CASES.

13 MR. ADAIR: MEMBER OF THE MARYLAND BAR, DISTRICT OF
14 COLUMBIA, CALIFORNIA BAR, COURT OF MILITARY APPEALS, FIVE YEARS
15 ACTIVE DUTY NAVY JAG, CERTIFIED AS A MILITARY JUDGE. LET'S
16 SEE. I PRACTICE IN BOTH STATE AND FEDERAL COURT.

17 I'VE BEEN DOING PRETTY MUCH EXCLUSIVELY CRIMINAL
18 DEFENSE SINCE -- I'VE BEEN AN ATTORNEY SINCE 1967. PRETTY MUCH
19 DONE CRIMINAL DEFENSE ALMOST EXCLUSIVELY SINCE ABOUT LATE '70S.
20 AROUND 1979 OR SO. PREVIOUSLY SERVED AS A CERTIFYING CRIMINAL
21 LAW SPECIALIST, BUT DIDN'T RENEW IT BECAUSE IT DIDN'T SEEM TO
22 MAKE ANY DIFFERENCE. I'VE DONE TWO CAPITAL CASES AND PROBABLY
23 60 OR SO MURDER CASES. TRIALS, 200 OR 300. AVERAGE ABOUT MAYBE
24 BETWEEN THREE TO FIVE TRIALS A YEAR, BOTH FEDERAL AND STATE
25 COURT, AND ATTEND SEMINARS PRETTY REGULARLY.

26 I THINK THIS LAST YEAR I HAD 60 HOURS OF CONTINUING
27 LEGAL EDUCATION SEMINARS, INCLUDING ATTENDANCE AT THE
28 CALIFORNIA -- EXCUSE ME -- THE MONTEREY CAPITAL CASE SEMINAR PUT

(28) counsel should be advised

1 ON BY THE CALIFORNIA PUBLIC DEFENDERS' ASSOCIATION EVALUATION
2 AND THE CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE. ATTENDED
3 THAT THE LAST TWO YEARS. I'VE BEEN ATTENDING IT ON A REGULAR
4 BASIS SINCE IT FIRST STARTED IN ABOUT 1980. I WAS THE
5 ORIGINATOR OR THE FOUNDER OF THE SUBCOMMITTEE OF THE
6 CALIFORNIA -- EXCUSE ME, THE SAN DIEGO CRIMINAL DEFENSE
7 ATTORNEYS CLUB ON CAPITAL CASES, WHERE WE WOULD MEET AND DISCUSS
8 ISSUES THAT WERE HEARD, AS FAR AS CAPITAL CASES. THIS, AGAIN,
9 WAS IN THE EARLY '80S.

10 THE COURT: THAT GIVES ME A PRETTY GOOD OVERVIEW, AT
11 LEAST

12 HOW LONG HAVE YOU BEEN REPRESENTING MR. BURTON?

13 MR. ADAIR: SINCE SOMETIME IN NOVEMBER.

14 THE COURT: WAS HIS SUMMARY OF THE SEQUENCE OF EVENTS
15 ACCURATE, TO THE BEST OF YOUR KNOWLEDGE?

16 MR. ADAIR: I BELIEVE IT WAS. PUBLIC DEFENDER FIRST WITH
17 MR. ERICSEN. THERE WAS A CONFLICT. HE GOT OFF. MR. PLUMMER
18 WAS APPOINTED, PCC. REPRESENTED MR. BURTON UNTIL ABOUT
19 NOVEMBER, [REDACTED] AND MR. NEWTON WAS
20 APPOINTED THROUGH PCC. AND WITHIN A DAY OR SO, MR. NEWTON
21 REALIZED THERE WAS A CONFLICT, AND I WAS APPOINTED.

22 THE COURT: OKAY. AND IF YOU COULD BRIEFLY EXPLAIN WHAT
23 TYPE OF WORK YOU'VE DONE TO REPRESENT MR. BURTON SINCE YOU CAME
24 ONTO THE CASE?

25 MR. ADAIR: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

CONCERNING HIS EYESIGHT AND TREATMENT FOR THAT

CONCERNING HIS EYESIGHT AND TREATMENT FOR THAT

~~THE COURT: FOR MANY OF THOSE RECORDS, HE~~

THE COURT: BEFORE WE GO DOWN HIS LIST OF COMPLAINTS,

~~EVERYTHING ELSE JUST IN FRONT OF HIM~~

~~AND HE'S NOT SURE THAT HE'S~~

~~BEFORE THE COURT, HE'S NOT SURE THAT HE'S~~

~~BEFORE THE COURT, HE'S NOT SURE THAT HE'S~~

MR. ADAIR: WELL, PART OF IT IS MR. BURTON HAS BEEN DOING
A LOT OF RESEARCH ON HIS OWN IN THE LAW LIBRARY AND HAS A LOT OF
LEGAL THEORIES AS FAR AS WHY THE CASE SHOULD BE DISMISSED.

~~BECAUSE OF THE AND HE'S GREATLY CONCERNED, AND HE CAN~~

~~ALMOST EVERYTHING WITH THE COURT, IT HAS NOT BEEN~~

~~PRODUCTIVE AS FAR AS ACTUAL ISSUES CONCERNING THE~~

~~INVESTIGATION, AS FAR AS THE COURT IS CONCERNED, IT'S~~

THE COURT: WHY DON'T WE GO, THEN, TO THE ISSUES HE'S
RAISED, AND IF YOU COULD BRIEFLY RESPOND. HE FIRST RAISED

~~THE COURT: THE COURT IS NOT SURE THAT HE'S~~

~~CONFIDENCE IN THAT THE COURT IS NOT SURE THAT HE'S~~

~~SOUNDS LIKE THE COURT IS NOT SURE THAT HE'S~~

~~BEFORE THE COURT, HE'S NOT SURE THAT HE'S~~

WHEN HE CALLS YOUR OFFICE TO IMPART INFORMATION, IS
THAT SOMETHING THAT GETS COMMUNICATED TO YOU?

MR. ADAIR: ~~THE COURT~~. BUT I'M NOT ALWAYS IN MY OFFICE, OF
COURSE. AND THEN I DO HAVE AN ASSISTANT WHO IS USUALLY THERE
BETWEEN THE HOURS OF ABOUT 10:30 AND 4:30. BUT SHE'S NOT ALWAYS
THERE. SHE ALSO DOES ERRANDS, FILES PAPER WITH THE COURTS,

~~THE COURT: THE COURT IS NOT SURE THAT HE'S~~

THE COURT: AND SINCE THE TIME OF THE CALL TO YOU, WHICH
APPEARS TO HAVE BEEN EARLY JANUARY, I TAKE IT YOU HAVE HAD

1 MEETINGS WITH MR. BURTON PERSONALLY?

2 MR. ADAIR: [REDACTED]

4 [REDACTED] FOR A WHILE MR. BURTON WAS HOUSED AT THE
5 DOWNTOWN JAIL, WHICH IS CONVENIENT BECAUSE IT'S NEAR MY OFFICE.
6 HE WAS TRANSFERRED TO GEORGE BAILEY SEVERAL MONTHS AGO. AND
7 THAT TAKES BASICALLY HALF A DAY OUT OF YOUR WORKING DAY TO DO A
8 VISIT AND DO THE TRANSPORTATION DOWN THERE AND BACK. [REDACTED]

13 THE COURT: [REDACTED]

14 ADEQUATE TIME SPENT AND HE'S REFERENCED TO ADEQUATE -- I THOUGHT
15 HE SAID PRO VISITS, BUT I'M NOT QUITE SURE.

16 MR. ADAIR: I THINK HE MEANT PROFESSIONAL VISITS.

17 THE COURT: [REDACTED]

18 MEETING WITH HIM. AND SO DO YOU HAVE ANY TYPE OF ESTIMATE TO --
19 SINCE YOU CAME ON THE CASE BACK IN NOVEMBER, DO YOU HAVE ANY WAY
20 TO ESTIMATE HOW OFTEN YOU'VE EITHER MET FACE TO FACE OR BY

22 MR. ADAIR: I DON'T KNOW. [REDACTED] -- I

23 DON'T KNOW HOW MANY TIMES ON THE TELEPHONE WE'VE TALKED. [REDACTED]

25 [REDACTED] I DID NOT TALK TO HIM MONDAY BECAUSE I --
26 AFTER WE TRAILED THE CASE FOR TWO DAYS, I HAD TO LEAVE
27 IMMEDIATELY TO MAKE AN APPOINTMENT DOWNTOWN. HE WAS NOT IN THE
28 COURTROOM FOR THE TRAILING.

MR. ADAIR: WELL, THE THREATS ON THE CELL PHONE --

~~REDACTED~~ I HAVE NOT CHECKED ON THAT. BUT

MY UNDERSTANDING WOULD BE ANY CONVERSATIONS WITH THREATS WOULD
HAVE BEEN RECORDED ON SOME SORT OF VOICEMAIL THAT WOULD HAVE

THE COURT: HE'S RAISED THE ISSUE ABOUT FORENSIC TESTING

~~MR. ADAIR: THE ISSUE INVOLVES THE HOSTING DOWN OF THAT~~

AGAIN, I CAME ON THE CASE SIX -- APPROXIMATELY SIX

MONTHS, SEVEN, EIGHT MONTHS -- EIGHT MONTHS LATER. AND AT LEAST

IN MY MIND, [REDACTED], IT WOULD

APPEAR THAT ANY ATTEMPT TO DO LUMINAL TESTING OR WHATEVER WILL

NOT BE PRODUCTIVE

1 EARLIER?

2 MR. ADAIR: I DIDN'T FEEL IT WOULD BE PRODUCTIVE.

3 THE COURT: AND THE MOTION TO SUPPRESS? THOSE MOTIONS
[REDACTED]

6 MR. ADAIR: I THINK HE WOULD HAVE PREFERRED THEY BE DONE
[REDACTED]

8 THE COURT: SOONER IN THE CASE?

9 MR. ADAIR: SOONER.

10 THE COURT: WERE THOSE DONE BY YOU OR BY MR. PLUMMER?

11 MR. ADAIR: I THINK BOTH. I THINK MR. PLUMMER FILED A
12 NUMBER OF MOTIONS, INCLUDING A DISCOVERY MOTION, AND THAT THEY
13 WERE BASICALLY TAKEN OFF CALENDAR.

14 THE COURT: [REDACTED]

15 PROTECTIVE ORDER AND, [REDACTED]

16 [REDACTED] DO YOU HAVE ANY UNDERSTANDING?

17 MR. ADAIR: AS FAR AS -- EXCUSE ME. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

21 THE COURT: ALL RIGHT.

22 MR. ADAIR: SOME OF THE MOTIONS THAT MR. BURTON FEELS ARE
23 VERY IMPORTANT IN HIS CASE, [REDACTED]
[REDACTED]

25 [REDACTED], IN MY VIEWPOINT, [REDACTED]
[REDACTED]

27 [REDACTED] SUCH AS THE REQUEST

28 FOR WRIT OF MANDATE, IT SEEMS LIKE A WASTE OF TIME TO

1 CONCENTRATE ON THAT WITH THE -- [REDACTED]

3 ON TRIAL ISSUES.

4 *THE COURT: HE RAISED AN ISSUE ABOUT FALSE STATEMENTS ON
5 THE RECORD. [REDACTED]

8 MR. ADAIR: I THINK WHAT HE MAY BE REFERRING TO IS WHEN I
9 WROTE UP A STATEMENT OF FACTS, HE DISAGREED WITH IT AND FELT

11 HAS BEEN THAT THE STATEMENT OF FACTS HAS TO BE COMPLETELY
12 ACCURATE AND DETAILED; OTHERWISE HE LOSES SOME RIGHTS CONCERNING

14 [REDACTED]
15 STATEMENT OF FACTS IN A MOTION FOR YOU JUST FRAME THE ISSUE AND
16 STATE THE FACTS -- THE FACTS COME OUT IN THE HEARING ON THE
17 MOTION. AND THAT'S BASICALLY WHAT I TRIED TO DO IS FRAME THE
18 ISSUE, [REDACTED]

25 THE COURT: IN YOUR PROFESSIONAL JUDGEMENT, WHAT NEEDS TO
26 BE DONE HAS BEEN DONE?

27 MR. ADAIR: SOME OF THE THINGS THAT COULD STILL BE DONE
28 ARE GETTING DOCUMENTS. AND WE HAVE ISSUED SUBPOENAS FOR THE

1 DOCUMENTS. AND THE MAJOR THING WOULD BE THE ARREST REPORTS
2 CONCERNING MR. THOMAS.

3 ~~THE COURT: THOSE ARE SOME OF THE DOCUMENTS THAT CAME~~
4 ~~TODAY.~~

5 MR. ADAIR: ~~THAT WAS SOME OF THE DOCUMENTS THAT CAME~~
6 LAW ENFORCEMENT AGENCIES. SAN DIEGO POLICE DEPARTMENT, I DON'T
7 THINK, HAS RESPONDED.

8 ~~THE COURT: YOU HAVE THE NEXT FEW DAYS TO COME UP WITH~~
9 ~~THEM.~~

10 ~~MR. ADAIR: ALL RIGHT.~~
11 THE COURT: ALL RIGHT. ~~---~~ MOTION
12 TO COMPEL DISCOVERY. IS THERE STILL ANY LURKING DISCOVERY
13 ISSUES?

14 MR. ADAIR: ~~---~~ FIRST OFF ~~---~~
15 ~~---~~
16 ~~---~~
17 AND IT CAN'T BE RESOLVED.

18 ~~---~~ -- FIRST
19 OFF, I'VE SENT A LETTER TO HER REQUESTING CERTAIN ITEMS.
20 MR. PLUMMER DID THE SAME. MR. PLUMMER FILED A MOTION THAT WAS
21 SERVED ON HER. ~~---~~
22 DISCOVERY ISSUES WITH THE PROSECUTOR. ~~---~~

23 ~~---~~
24 ~~---~~

25 ~~---~~
26 ~~---~~

27 ~~---~~
28 ~~---~~

~~1 THE DEFENDANT TO PRESENT THE COURT WITH ANY OTHER MOTIONS THAT~~
~~2 I REQUESTED THAT THE COURT COULD DO FOR ME AND MY~~
~~3 OTHER CO-DEFENDANTS, AND OUR~~
~~4 THE COURT. HE SAID IN THE COURT OF APPEALS, AND IN THE COURT~~
~~5 YOU CAME ON THE CASE, WOULD BEAT HAVE BEEN GIVEN THE OPTION?~~
~~6 MR. ADAIR: WELL, I WOULD BE WINDING UP MY DEMONSTRATION THAT~~
~~7 THE COURT FOR THE LANGUAGE IN THE CHARGING DOCUMENTS DON'T~~
~~8 THE COURT FOR THE LANGUAGE IN THE CHARGING DOCUMENTS DON'T~~

9 THE COURT: AND THEN ANY OTHER PRETRIAL MOTIONS THAT
10 YOU'VE BEEN DISCUSSING OR HAVE AN ISSUE ABOUT, THAT YOU'RE AWARE
11 OF?

12 MR. ADAIR: I THINK MR. BURTON HAS A NUMBER OF OTHER

~~13 ISSUES HE WANTS TO PRESENT SOME OF THEM TO THE COURT~~
~~14 IMPROPER OR NOT RELEVANT, BUT WOULD NOT BE PROSECUTED AND COME~~
~~15 THE COURT~~

16 THE COURT: ALL RIGHT. ANYTHING ADDITIONAL THAT YOU
17 WANTED TO SAY IN RESPONSE TO THE SUMMARY OF THE COMPLAINTS THAT
18 MR. BURTON GAVE?

19 MR. ADAIR: NO, YOUR HONOR.

20 THE COURT: ALL RIGHT. THANK YOU.

21 MR. BURTON, DID YOU HAVE ANYTHING NEW YOU WANTED TO
22 ADD IN RESPONSE TO WHAT MR. ADAIR HAS TOLD THE COURT?

23 THE DEFENDANT: IF I JUST MAY HAVE A MOMENT TO THINK.
24 LIKE, ONE MINUTE.

25 THE COURT: SURE.

26 MR. ADAIR: YOUR HONOR, MR. BURTON HAS TWO PAPERS HERE.
27 THE FIRST TALKS ABOUT TRIAL STRATEGY. AND I GUESS A DECISION OF
28 COUNSEL OR THE DEFENDANT AS TO TRIAL STRATEGY. ~~THE COURT~~

2 MAY I PASS THESE ON TO YOU, YOUR HONOR?

3 THE COURT: SURE. THANK YOU.

8 THE COURT: AND THEN YOU ALSO, IT LOOKS LIKE, PULLED SOME
9 LANGUAGE OUT OF A CASE RELATING TO THE FACT THAT THE
10 DECISIONMAKING ON STRATEGY IS THE DUTY OF DEFENSE COUNSEL, BASED
11 UPON THE DEFENDANT CONSENTING

15 THE COURT: WE'LL MAKE THOSE PART OF THE COURT FILE AS
16 WELL AS YOUR VISITOR INMATE PRINTOUT SHEET. SO WE'LL HAVE A
17 RECORD OF THAT

21 THE COURT: OKAY.

1 ~~_____~~ -- I DIDN'T
2 BELIEVE HE COULD WIN HIS CASE

3 THE COURT: ALL RIGHT. WELL, ~~_____~~

4 ~~_____~~
5 -- MR. BURTON HAS CERTAIN THINGS HE WANTED TO HAVE. AND
6 ~~_____~~

7 SHOULD BE DONE

8 TO THE EXTENT THERE ARE ANY CONFLICTS MADE BY EITHER
9 OF YOU IN YOUR STATEMENTS, I DO BELIEVE, MR. ADAIR, FOR EXAMPLE,
10 ~~_____~~

11 ~~_____~~
12 ~~_____~~
13 ~~_____~~
14 ~~_____~~
15 ~~_____~~
16 PREARRANGED OR RESPONDED TO THAT QUICKLY IN RESPONSE TO A CALL
17 BY MR. BURTON TO MR. ADAIR'S OFFICE.

18 MR. ADAIR: IN OTHER WORDS, I SHOULD CONFIRM, ~~I CAN'T GET~~
19 ~~_____~~

20 THE COURT: YES. ~~_____~~. SHE'S
21 VERY BUSY. AND I REMEMBER IN PAST TIMES TRYING TO SCHEDULE
22 AROUND HER SCHEDULE IS DIFFICULT.

23 SO THAT TO ME IS A VERY LOGICAL EXPLANATION AS TO
24 THAT EVENT. THE OTHER EXPLANATION -- OR THE COMPLAINTS MADE BY
25 MR. BURTON, I THINK THAT MR. ADAIR HAS ADEQUATELY EXPLAINED WHY
26 HE TOOK THE ACTION THAT HE DID. OR WHY HE DIDN'T PURSUE THINGS
27 THAT HE FELT WOULD NOT BE HELPFUL. AND I FIND THAT AT THIS
28 POINT HE HAS PROPERLY REPRESENTED MR. BURTON AND WILL CONTINUE

1 TO DO SO.

2 I DON'T SEE THAT THERE'S BEEN A BREAKDOWN IN THE
3 RELATIONSHIP. I NOTE THAT THROUGHOUT THE HEARINGS, AS WE'VE
4 BEEN HEARING MOTIONS TODAY, MR. ADAIR HAS RAISED POINTS AND THEN
5 STOPPED AND CONSULTED WITH MR. BURTON AND THEN RAISED ADDITIONAL
6 POINTS.

7 SO IT APPEARS TO ME THAT THERE IS COMMUNICATION.

8 [REDACTED]
9 [REDACTED]
10 MOTION SIGNIFICANCE. AND SOME OF THE MOTIONS THAT HE'S RAISED,

11 [REDACTED]
12 THE COURT WOULDN'T BE GRANTING IT. [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 IMPOSSIBLE FOR MR. ADAIR TO EFFECTIVELY REPRESENT MR. BURTON.

18 TO THE EXTENT THERE HAVE BEEN ANY DIFFICULTIES, IT
19 SEEMS LIKE SOME OF THEM HAVE BEEN CAUSED BY MR. BURTON NOT
20 EITHER WANTING TO SIGN CONSENT FORMS OR MAKING IT MORE DIFFICULT

21 [REDACTED]
22 PREFER TO HAVE FACE-TO-FACE MEETINGS WITH HIS ATTORNEYS,
23 [REDACTED]

24 IT'S MORE EFFICIENT TO COMMUNICATE IN WRITING OR HAVE ANOTHER
25 COME ON YOUR ATTORNEY'S BEHALF. [REDACTED]

26 [REDACTED]
27 THERE IS NOT EFFECTIVE REPRESENTATION. SO THE MARSDEN MOTION IS
28 DENIED. [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 MR. ADAIR: COULD I ADD ONE THING, YOUR HONOR?

5 THE COURT: YES, YOU MAY.

6 MR. ADAIR: IT JUST POPPED INTO MY MIND, PART OF THE
7 PROBLEM WITH DR. DIFRANCESCA -- AND I JUST REMEMBERED THIS -- IS
8 THAT I HAD ASKED HER TO SEE MR. BURTON. ^{910P} SHE GAVE ME A TIME
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 EARLIER THAN I WAS ANTICIPATING.

16 WHEN I DID TALK TO MR. BURTON, HE BASICALLY TOLD ME
17 THAT HE WAS UPSET ABOUT IT AND ALSO THAT HE WAS NOT GOING TO BE
18 INTERVIEWED BY DR. DIFRANCESCA OR ANY PSYCHOLOGIST.
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 THE COURT: OKAY. THEN AT THIS POINT, WE HAD -- I WAS
25 ATTEMPTING TO HAVE MS. HANNAH BE CALLED BACK BECAUSE WE DID NEED
26 TO DEAL WITH THE ISSUE OF THE EVIDENCE THAT MIGHT BE ADMITTED
[REDACTED]
[REDACTED]

1 THE COURT: YES. AND WE HAD THE ISSUE OF THE CASTRO, AS
2 WELL AS THE EVIDENCE YOU MIGHT WANT TO PRESENT, SELF-DEFENSE.
3 SO IF WE CAN GET AHOLD OF HER AND GET THAT ADDRESSED BEFORE THE
4 END OF CLOSED SESSION TODAY.

[REDACTED]

[REDACTED]

[REDACTED]

8 [REDACTED] BUT IF WE
9 CAN GET IT SOLVED NOW, THAT WOULD BE NICE.

10 MR. ADAIR: I'M SURE MY ARGUMENT IS GOING TO BE SO
11 CONVINCING, IT WON'T TAKE MUCH TIME.

12 THE COURT: SHE'LL BE HERE IN JUST A MOMENT.

13 (CONCLUSION OF SEALED PROCEEDINGS. UNSEALED
14 PROCEEDINGS CONTINUE ON PAGE 207; [REDACTED])

15

16

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[REDACTED]

2 MR. ADAIR: NO FURTHER QUESTIONS, YOUR HONOR.
3 THANK YOU.

4 THE COURT: MISS HANNAH, ANYTHING FURTHER OF MR.
5 MC KELVEY?

6 MS. HANNAH: NO, YOUR HONOR.

7 THE COURT: ALL RIGHT. THANK YOU, MR. MC
8 KELVEY, FOR BEING HERE. YOU CAN STEP DOWN. JUST HAVE A
9 SEAT IN THE SPECTATOR'S SECTION FOR A FEW MOMENTS, IF YOU
10 WOULD, PLEASE.

11 ALL RIGHT. THEN PRESUPPOSING A TIME WAIVER BY
12 MR. BURTON, NOTWITHSTANDING THE PEOPLE'S OBJECTION, I AM
13 GOING TO CONTINUE THIS SUPPRESSION HEARING TO A FUTURE DATE,
14 SPECIFICALLY FEBRUARY 24TH AS SUGGESTED BY MR. ADAIR. AND
15 I'M ALSO PREPARED TO CHANGE THE TRIAL DATE TO MARCH 14TH,
16 AGAIN, PRESUPPOSING A TIME WAIVER BY MR. BURTON. SO BEFORE
17 I DO THAT, ANYTHING FURTHER FOR THE RECORD BY EITHER
18 COUNSEL?

19 MS. HANNAH: YOUR HONOR, I'M SORRY. THE 1538 IS
20 CONTINUING UNTIL FEBRUARY 24?

21 THE COURT: CORRECT, AT 9:00, THIS DEPARTMENT.

22 MS. HANNAH: OKAY. NOTHING FURTHER.

23 THE COURT: THE NEW TRIAL DATE WILL BE MONDAY,
24 MARCH 14TH AT 9:00 IN DEPARTMENT 11.

25 ALL RIGHT. MR. BURTON, YOU HAVE THE RIGHT TO A
26 TRIAL WITHIN 60 DAYS OF THE FILING OF THE INFORMATION IN
27 THIS CASE. [REDACTED]

[REDACTED]

1 [REDACTED] THE NEW TRIAL DATE OF MONDAY, MARCH 14TH,
2 UNDERSTANDING THAT AS A MATTER OF LAW, THE COURT WILL HAVE
3 UP TO 10 DAYS AFTER THAT DATE TO ACTUALLY BEGIN TRIAL. [REDACTED]
[REDACTED]
[REDACTED]

6 THE COURT: [REDACTED]
7 ORDERED RESET FOR MONDAY, MARCH 14TH AT 9:00 A.M. IN
8 DEPARTMENT 11. FURTHER HEARING OF THE DEFENDANT'S MOTION TO
9 SUPPRESS EVIDENCE PURSUANT TO PENAL CODE SECTION 1538.5 IS
10 SET FOR THURSDAY, FEBRUARY 24TH AT 9:00 IN THIS DEPARTMENT,
11 DEPARTMENT 12.

12 COUNSEL, DO YOU WISH CERTAIN OF THE PROSPECTIVE
13 WITNESSES WHO ARE STILL PRESENT IN THE COURTROOM TO BE
14 ORDERED BACK FOR THE MARCH 14TH TRIAL DATE?

15 MS. HANNAH: YES, YOUR HONOR. MR. MC KELVEY
16 STAND, MS. ANGELA [REDACTED] STAND, AND MR. [REDACTED] THOMAS STAND.

17 THE COURT: ALL RIGHT. THANK YOU. FOLKS, AS
18 YOU'VE JUST HEARD, THE TRIAL FOR THIS CASE HAS BEEN RESET
19 FOR MONDAY, MARCH 14TH AT 9:00 IN DEPARTMENT 11. YOU EACH
20 REMAIN UNDER SUBPOENA AND SUBJECT TO FURTHER ORDER OF THE
21 COURT. YOU ARE EACH ORDERED TO RETURN TO COURT IN
22 DEPARTMENT 11, NEXTDOOR TO THIS ONE, AT 9:00 IN THE MORNING
23 ON MONDAY, MARCH 14TH, UNLESS SPECIFICALLY ADVISED OTHERWISE
24 BY MISS HANNAH OR A REPRESENTATIVE OF THE DISTRICT
25 ATTORNEY'S OFFICE OR BY MR. ADAIR, COUNSEL FOR MR. BURTON.
26 DO YOU EACH UNDERSTAND THAT? ALL RIGHT. THANK YOU VERY
27 MUCH FOR YOUR COOPERATION. YOU'RE FREE TO GO AT THIS TIME.

28 MS. HANNAH: THANK YOU, YOUR HONOR.

1 SAN DIEGO, CALIFORNIA; WEDNESDAY, MARCH 16, 2005; 2:01 P.M.

2
3 THE COURT: GOOD AFTERNOON.

4 MR. ADAIR: GOOD AFTERNOON, YOUR HONOR.

5 THE COURT: WE'RE ON THE RECORD IN PEOPLE VERSUS ERIC
6 WILTON BURTON. COURT NUMBER SCE 238643.

7 COUNSEL, STATE YOUR APPEARANCES.

8 MS. HANNAH: GOOD AFTERNOON, YOUR HONOR. MARIA HANNAH, ON
9 BEHALF OF THE PEOPLE.

10 MR. ADAIR: CHARLES ADAIR, ON BEHALF OF ERIC BURTON, YOUR
11 HONOR. [REDACTED]

12 THE COURT: ALL RIGHT. AND WE HAVE, BEFORE THE LUNCH
13 RECESS, HAD A CHANCE TO TALK IN CHAMBERS ABOUT HOW WE WILL
14 PROCEED. [REDACTED]

15 [REDACTED] BECAUSE THE COURT IS GOING TO BE DARK ON
16 MONDAY AND TUESDAY, WE WILL BE TRAILING THE TRIAL UNTIL MARCH
17 23RD, WEDNESDAY. [REDACTED]
[REDACTED]
[REDACTED]

20 COUNSEL ARE BOTH ESTIMATING THAT THE CASE SHOULD BE
21 COMPLETELY PRESENTED AND ARGUED AND SUBMITTED TO THE JURY NO
22 LATER THAN THE 29TH; IS THAT CORRECT?

23 MS. HANNAH: IT IS.

24 MR. ADAIR: THAT'S CORRECT, YOUR HONOR.

25 HOWEVER, IF IT DOES GO LONGER -- AND, OBVIOUSLY,
26 IT'S HARD TO PREDICT -- THEN WE WOULD HAVE, I GATHER, A RECESS
27 UNTIL YOUR HONOR GETS BACK IN TOWN.

28 THE COURT: WE WOULD.

(45)

1 THE COURT: MS. HANNAH HAS NOW JOINED US, AND THE
2 COURTROOM IS OPEN. AND I HAD RECALLED AFTER WE LET YOU GO THAT
3 I HAD FORGOTTEN TO ADDRESS THE ISSUE I HAD RESERVED ON, WHICH
4 WAS THE CASTRO MOTION IN CONJUNCTION WITH THE DEFENSE REQUEST TO
5 HAVE EVIDENCE RELATING TO MR. THOMAS' PAST ACTS.

6 I'M NOT QUITE SURE WHAT THEY HAD IN MIND. SO MAYBE
7 I CAN GET FROM MR. ADAIR A SUMMARY OF WHAT TYPE OF EVIDENCE
8 THEY'RE HOPING TO ELICIT. AND I'M ASSUMING IF THIS IS ON THE
9 THEORY OF SELF-DEFENSE, THE DEFENSE WOULD BE ENTITLED TO
10 EVIDENCE OF INFORMATION ON THE ^{ALLEGED} VICTIM.

11 MR. ADAIR: YES, YOUR HONOR.

12 AGAIN, WE STILL HAVE TWO ISSUES, AS I SEE IT. THE
13 FIRST ISSUE IS WHETHER THE -- AT LEAST, THE FELONIES, AS STATED
14 HERE, PERTAIN TO MORAL TURPITUDE AND CAN BE USED FOR
15 IMPEACHMENT. THERE MAY BE ADDITIONAL CONVICTIONS THAT ARE
16 RELEVANT. [REDACTED] -- FOR EXAMPLE,
17 MISDEMEANORS THAT INVOLVE MORAL TURPITUDE.

18 THE COURT: WELL, IT DOESN'T SOUND -- ARE YOU AT THIS
19 POINT PLANNING TO -- LET'S FOCUS JUST ON THE IMPEACHMENT ISSUE.
20 IS THERE ANYTHING YOU WOULD BE SEEKING TO ADMIT JUST UNDER A
21 STRAIGHT CASTRO THEORY TO IMPEACH MR. THOMAS, OTHER THAN THE
22 THREE FELONIES THAT MS. HANNAH HAS LISTED?

23 MR. ADAIR: I DON'T KNOW, YOUR HONOR. [REDACTED]

24 [REDACTED]
25 THE COURT: SO YOU HAVEN'T HAD A CHANCE TO LOOK?

26 [REDACTED]
27 THE COURT: ALL RIGHT. WELL, THEN MAYBE IT'S PREMATURE TO
28 ADDRESS THIS. [REDACTED]

46

1 ARREST OR OTHER TYPES OF ARREST -- INCIDENT REPORTS RELATING TO
2 MR. THOMAS?

3 MR. ADAIR: THAT'S CORRECT.

4 THE COURT: AND I TAKE IT, BASED UPON THE DEFENSE OF
5 SELF-DEFENSE, YOU MAY BE ASKING TO HAVE EVIDENCE COME IN AS IT
6 RELATES TO PAST ACTS OF VIOLENCE?

7 MR. ADAIR: THAT WOULD BE THE SECOND ISSUE, YES. AND
8 MAYBE I SHOULD INDICATE I BELIEVE THAT AT LEAST SOME OF THE
9 INCIDENTS THAT WE HAVE ARREST REPORTS ON INVOLVE DOMESTIC
10 VIOLENCE. AND THAT IS CONSIDERED TO BE A CRIME OF MORAL
11 TURPITUDE.

12 THE COURT: WELL, [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 [REDACTED] TODAY IS WEDNESDAY.
17 [REDACTED] BY EITHER FAX OR
18 TELEPHONE OR OTHERWISE, OF WHAT INCIDENTS YOU WOULD BE WANTING
19 TO ELICIT. [REDACTED]

20 [REDACTED] THEN YOU
21 BOTH WILL BE BETTER ABLE TO PRESENT IT TO ME NEXT WEEK, SINCE I
22 WON'T BE HERE MONDAY OR TUESDAY. IT WILL SIMPLY BE SOMETHING WE
23 CAN TRY TO ADDRESS BEFORE WE BRING IN OUR JURY, OR ELSE WE'LL
24 DEAL WITH IT IN SOME FASHION BEFORE WE GET TO OPENING
25 STATEMENTS. IT SOUNDS LIKE A PLAN.

26 MS. HANNAH: YES.

27 MR. ADAIR: SOUNDS LIKE, YOUR HONOR. [REDACTED]
28 [REDACTED]

3 THE COURT: LIKE I SAID, IF YOU DON'T HAVE THE
4 INFORMATION, I CAN'T RULE ON IT.

5 MR. ADAIR: YES, YOUR HONOR.

6 THE COURT: WHATEVER YOU HAVE, WE'LL DEAL WITH IT AT THAT
7 TIME. ALL RIGHT. THANK YOU. WE'LL BE IN RECESS.

8 (AT 4:16 P.M., THE PROCEEDINGS WERE ADJOURNED.)

9 * * *

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO
EAST COUNTY DIVISION

0350

DATE: 3-23-05

DEPT: 10

Reporter: Tamela Ervin 9685

PRESENT HON. LAURA W. HALGREN
JUDGE

CLERK: N. Kerr

REPORTER'S ADDRESS: P.O. BOX 128
SAN DIEGO, CA 92112-4104

BAILIFF: J. Mitchell

SCE238643

People of the State of California,
Plaintiff by Maria Hannah
vs

Burton, Eric Defendant by Charles Adair

At 8:45 am case This being the time set for further **TRIAL BY JURY** having been continued from 3-16-05. The People are present by Deputy District Attorney Maria Hannah. Private Conflict Counsel Charles Adair represents the defendant, who is not present. The Court informs both attorneys that the defendant is in the hospital and will not be brought by the jail this morning for trial today.

The attorneys are ordered to return at 11:30 to see if the defendant will be transported this afternoon.

9:00 am Court is in recess.

11:27 am Court is again in session with all parties present as previously noted. The Court informs the attorneys that the jail has indicated the defendant will not be transported today. The trial is trailed to **March 24, 2005 at 9:00 am in department 10.** Attorney Adair informs the Court that he will be making a motion pursuant to PC1368 and the defendant may request a Marsden hearing.

11:32 am Court is adjourned.

-nk-

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO
EAST COUNTY DIVISION

0351

DATE: 3-24-05

DEPT: 10

Reporter: Tamela Ervin 9685

PRESENT HON. LAURA W. HALGREN
JUDGE

CLERK: N. Kerr

REPORTER'S ADDRESS: P.O. BOX 128
SAN DIEGO, CA 92112-4104

BAILIFF: J. Mitchell and N. Walker

SCE238643

People of the State of California,
Plaintiff

by Maria Hannah

vs

Burton, Eric

Defendant by Charles Adair

At 9:11 am This being the time set for further **TRIAL BY JURY** having been continued from 3-16-05. The People are present by Deputy District Attorney Maria Hannah. Private Conflict Counsel Charles Adair represents the defendant, who is personally present.

The defendant requests a Marsden motion and a Faretta motion. Attorney Adair requests motion pursuant to PC1368. Deputy District Attorney Maria Hannah, objects to the motions. The attorneys present argument.

The court **DENIES** the request for the Marsden motion. The Court feels that a competency hearing is appropriate. All criminal proceedings are hereby suspended. See SDSC CR-160 minutes.

The defendant is remanded to custody with bail set at \$500,000.00

9:30 am Court is in recess.

-nk-

TRIAL MINUTES

50

1 SAN DIEGO, CALIFORNIA; THURSDAY, MARCH 24, 2005; 9:10 A.M.

2
3 THE COURT: THIS IS PEOPLE VERSUS BURTON. COUNSEL AND
4 DEFENDANT ARE PRESENT.

5
6 ~~REDACTED~~ BUT FIRST I NEED TO -- WE
7 NEED TO PUT A FEW THINGS ON THE RECORD.

8 BASED UPON COMMUNICATIONS WITH THE JAIL YESTERDAY,
9 THE COURT WAS INFORMED THAT THERE WERE MEDICAL ISSUES THAT
10 NEEDED TO BE ADDRESSED FOR MR. BURTON.

11 AND SO BECAUSE OF THOSE MEDICAL ISSUES AND
12 EVALUATIONS BY DOCTORS, HE WAS WASN'T ABLE TO BE
13 TRANSPORTED.

14 SO I NEED TO KNOW IF THERE'S ANYTHING FURTHER THAT
15 NEEDS TO BE PUT ON THE RECORD REGARDING THAT. ANY NEW
16 INFORMATION OR ANYTHING ADDITIONAL THAT'S BEEN DETERMINED?

17 MR. ADAIR: I'M NOT AWARE OF ANYTHING, YOUR HONOR.

18 THE COURT: ALL RIGHT.

19 AND MR. BURTON IS HERE TODAY.

20 ~~REDACTED~~, AND SO WE NEED TO PROCEED. ~~REDACTED~~

21 ~~REDACTED~~ I NEED TO KNOW WHAT OTHER
22 MOTIONS ARE GOING TO BE HEARD. MR. ADAIR.

23
24 THE DEFENDANT: FARETTA.

25 THE COURT: ALL RIGHT. FARETTA MOTION AND MARSDEN.

26 MR. ADAIR: AS I INFORMED YOU YESTERDAY, I HAVE A
27 SERIOUS QUESTION AS TO WHETHER OR NOT MR. BURTON IS ABLE TO
28 ASSIST IN HIS DEFENSE IN A RATIONAL MANNER AT THIS TIME.

51

1 → THE DEFENDANT: OBJECTION, YOUR HONOR.

2 THE COURT: WELL, MR. BURTON, I'M GOING TO HEAR FROM

3 MR. ADAIR FIRST. [REDACTED]

4 STATE THAT FOR THE RECORD;

5 MR. ADAIR: THE [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 CON- [REDACTED]

9 OTHER [REDACTED]

10 YOU [REDACTED]

11 CON- [REDACTED]

12 MR. [REDACTED]

13 YOU [REDACTED]

14 YOU [REDACTED]

15 YOU [REDACTED]

16 [REDACTED], BECAUSE HE NEEDS TO COOPERATE IN HIS DEFENSE.

17 AND IF HE'S NOT ABLE TO DO THAT, HE'S GOING TO BE VERY

18 HANDICAPPED.

19 → AND SO I'M MAKING A MOTION UNDER 1367/1368 OF THE

20 PENAL CODE. BECAUSE LIKE I SAID, I HAVE A SERIOUS QUESTION

21 ABOUT HIS ABILITY TO COOPERATE IN A RATIONAL MANNER OR HIS

22 CAPACITY TO COOPERATE AT THIS TIME.

23 THE COURT: ALL RIGHT. LET ME JUST MAKE A FEW

24 INQUIRIES. WHEN WE WERE IN COURT LAST WEEK, WE HAD PROBABLY

25 ABOUT A 45-MINUTE MARSDEN HEARING. AND AT THAT POINT THERE

26 WERE DEFINITELY DISAGREEMENTS BETWEEN MR. BURTON AND

27 YOURSELF AS TO HOW THE CASE WAS BEING CONDUCTED. BUT AT

28 THAT POINT YOU DID NOT RAISE THE MOTION ON COMPETENCY.

52

1 [REDACTED] YOU HAVE

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 MR. ADAIR: [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 SINCE MR. BURTON AND I DISAGREE, HE NEEDS AN EXAMINATION.

16 [REDACTED]

17 THE COURT: ALL RIGHT.

18 DO THE PEOPLE HAVE ANY INPUT ON THIS ISSUE?

19 MS. HANNAH: I DO, YOUR HONOR. PEOPLE ARE OPPOSED TO A

20 1368 VIA 1367 AT THIS TIME. I DO HAVE SOME ISSUES WITH THE

21 TIMELINESS OF IT. I UNDERSTAND THAT MR. ADAIR IS CITING

22 THAT THIS IS A RECENT DECLINE THAT APPEARS TO BE A RESULT OF

23 THE STRESS OF FACING TRIAL.

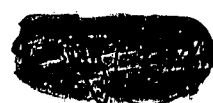
24 HOWEVER, I DON'T THINK THAT THAT'S THE TRUE TASK OF

25 A 1368. THE CRITERIA ARE TWOFOLD. ONE, WHETHER OR NOT THE

26 DEFENDANT UNDERSTANDS THE NATURE OF THE PROCEEDINGS. AND

27 TWO, WHETHER OR NOT HE CAN EFFECTIVELY ASSIST COUNSEL IN HIS

28 DEFENSE.



53

1 I'VE OBSERVED THE DEFENDANT OVER THESE PAST FEW
2 MONTHS, AS I'VE HAD THE CASE. AND MANY TIMES HE HAS
3 ACTIVELY PARTICIPATED IN HIS DEFENSE, DIRECTING OR SHARING
4 INFORMATION WITH COUNSEL, IT APPEARS, BY WRITING NOTES,
5 ~~READING NOTES~~ ~~READING NOTES~~, SPEAKING WITH HIS ATTORNEY, ASKING QUESTIONS
6 OF HIS ATTORNEY AND MAKING MOTIONS TO THE COURT.

7 I HAVE READ MATERIALS THAT THE DEFENDANT HAS
8 SUBMITTED TO THE COURT IN TERMS OF MOTIONS IN HIS OWN
9 DEFENSE. HE CLEARLY APPEARS TO UNDERSTAND THE PROCEEDINGS,
10 WHAT IS HAPPENING IN THE COURT. EVEN TODAY WHEN HE CAME
11 INTO COURT, HE INDICATED THAT HE WANTED A MARSDEN. ~~REDACTED~~

12 ~~I CAN'T REMEMBER THE SECOND MOTION THAT HE MADE~~
13 THE COURT: A FARETTA MOTION.
14 MS. HANNAH: A FARETTA MOTION. ~~REDACTED~~
15 MOTIONS. ~~REDACTED~~ -- THE AVERAGE DEFENDANT IS
16 NOT AWARE OF, BUT THE DEFENDANT IS AWARE OF.

17 THIS IS -- I KNOW IN THE LAST WEEK THIS IS HIS
18 SECOND REQUEST FOR A MARSDEN. SO THE DEFENDANT HAS SHOWN
19 THROUGH HIS CONDUCT THAT HE IS AWARE, HE UNDERSTANDS THE
20 NATURE OF THE PROCEEDINGS, HE UNDERSTANDS HIS OPTIONS DURING
21 THE PROCEEDINGS.

22 ~~I CAN'T HELP BUT THINK THAT THIS IS THE~~
23 ~~DEFENDANT IS CERTAINLY STRESSED, REDACTED~~
24 ~~REDACTED~~ I THINK THAT HIS OWN BEHAVIOR
25 SHOWS THAT HE CAN ASSIST COUNSEL WITH HIS DEFENSE. THAT,
26 COMBINED WITH HIS AWARENESS OF THE PROCEEDINGS, THE NATURE
27 OF THE PROCEEDINGS, HIS ABILITY TO AID DEFENSE COUNSEL,
28 PEOPLE ARE OPPOSED AND ASK THE COURT TO DENY THE REQUEST.

~~REDACTED~~ (54)

1 THE COURT: ALL RIGHT. THANK YOU.

2 MR. ADAIR: COULD I RESPOND, YOUR HONOR?

3 THE COURT: YES.

4 MR. ADAIR: YOUR HONOR, I'M, LIKE, THE FOURTH ATTORNEY
5 ON THE CASE. TWO OF THEM WERE RELIEVED DUE TO CONFLICT OF
6 INTEREST. [REDACTED]

9 THERE'S BEEN PROBLEMS WITH MR. BURTON FROM THE
10 BEGINNING, BUT NOTHING -- [REDACTED]

12 IT'S NOT SOMETHING MR. BURTON IS ASKING FOR. IT'S SOMETHING
13 I'M ASKING FOR. [REDACTED]

15 [REDACTED] AND THE
16 ISSUE, I FEEL, IN THIS CASE IS WHETHER HE'S ABLE TO ASSIST
17 IN A RATIONAL MANNER. [REDACTED]

22 THE COURT: ALL RIGHT. THANK YOU.

23 LET'S SEE. MR. BURTON, YOU HAD RAISED AN
24 OBJECTION. ARE YOU OBJECTING TO YOUR COUNSEL'S MOTION?

25 THE DEFENDANT: I WOULD LIKE AN ATTORNEY TO REPRESENT ME
26 FOR THIS MARSDEN. I HAVE A CONFLICT OF INTEREST. [REDACTED]

1
2 I'VE BROUGHT INFORMATION WITH ME TO SUPPORT A
3 CONFLICT OF INTEREST. AND I WOULD LIKE TO CONDUCT MY
4 MARSDEN AND HAVE A FEW MOMENTS TO CONSORT WITH THE
5 ATTORNEY -- THAT I'D LIKE TO ASK THE COURT HAVE AN ATTORNEY
6 ASSIST ME WITH THIS MARSDEN. BECAUSE MR. ADAIR IS -- HE
7 INTIMIDATES ME WITH HIS KNOWLEDGE AND HIS EXPERIENCE.

8 THE COURT: WELL, I'M NOT GOING TO HEAR A MARSDEN RIGHT
9 NOW BECAUSE BASED ON WHAT YOUR COUNSEL HAS TOLD ME, I
10 BELIEVE HE HAS LAID A SUFFICIENT EVIDENTIARY BASIS TO RAISE
11 A SUBSTANTIAL DOUBT AS TO WHETHER YOU'RE COMPETENT.

12 AND I DON'T SEE THAT -- THERE ARE THREE CRITERIA I
13 NEED TO LOOK AT. I THINK YOU'RE CAPABLE OF UNDERSTANDING
14 THE NATURE OF THESE PROCEEDINGS AND YOU UNDERSTAND YOUR
15 STATUS IN RELATIONSHIP TO THESE PROCEEDINGS. BUT I AM
16 CONCERNED AS TO WHETHER YOU ARE ABLE TO ASSIST YOUR ATTORNEY
17 IN CONDUCTING A DEFENSE OR THAT YOU'RE ABLE TO CONDUCT YOUR OWN
18 DEFENSE IN A RATIONAL MANNER. AND THAT'S A PARTICULAR CONCERN
19 BECAUSE YOU HAVE RAISED THE ISSUE OF A FARETTA MOTION.

20 AND THE STANDARDS THAT THE COURT WOULD USE TO
21 EVALUATE WHETHER YOU'RE COMPETENT TO REPRESENT YOURSELF ARE
22 THE SAME STANDARDS THAT ARE CONSIDERED IN DETERMINING
23 WHETHER YOU'RE MENTALLY COMPETENT TO ASSIST YOUR ATTORNEY.

24 AND SO I BELIEVE THAT THE ASSISTANCE OF A MEDICAL
25 EXPERT WOULD HELP THE COURT IN MAKING THAT DETERMINATION. IF
26 IT'S DETERMINED THAT YOU'RE COMPETENT, THEN YOU ARE CERTAINLY
27 FREE TO RAISE A MARSDEN OR A FARETTA MOTION OR WHATEVER ELSE YOU
28 THINK IS APPROPRIATE, AND THEN THE COURT AT THAT TIME WILL

56

1 EVALUATE IT. BUT I THINK IT WOULD BE PREMATURE FOR ME TO HEAR
2 THAT MOTION NOW, UNTIL WE ESTABLISH YOUR COMPETENCY.

[REDACTED]

[REDACTED]

[REDACTED]

6 AND I DO AGREE. I BELIEVE THAT IN OUR FIRST
7 CHAMBERS CONFERENCE BETWEEN COUNSEL AND THE COURT BEFORE WE
8 STARTED THIS TRIAL, MR. ADAIR HAD MENTIONED HIS CONCERNS,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13 S, I THINK THAT I AM GOING TO
14 RELY ON HIS JUDGMENT, PARTICULARLY BASED ON HIS EXPERIENCE
15 AND ALL OF THE STATEMENTS HE PUT ON THE RECORD DURING THE
16 MARSDEN HEARING RELATING TO HIS EXPERIENCE AS COUNSEL, WHICH
17 IS VAST. AND HE HAS DEALT IN MANY CASES -- MANY SERIOUS
18 CASES OVER THE YEARS.

19 AND I AGREE. [REDACTED] --
20 SIMPLY BECAUSE HE DISAGREES WITH THE STRATEGY OF THE
21 DEFENDANT, THAT WOULD BE THE REASON HE WOULD BRING THIS
22 MOTION. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

~~1 [REDACTED]~~
~~2 [REDACTED]~~
~~3 [REDACTED]~~
4 SO I AM GOING TO SUSPEND PROCEEDINGS SO THAT WE CAN
5 HAVE THE EVALUATION UNDER PENAL CODE SECTION 1368. MY CLERK
6 WILL BE SETTING -- OR CONTACTING THE DOCTORS. DO I NEED
7 ~~TO -- I DON'T APPOINT A PARTICULAR PERSON. IT'S JUST DONE~~
8 ~~THROUGH THE OFFICE OF THE COUNTY.~~

9 ~~MR. ADAIR, I BELIEVE THAT'S CORRECT, FORENSIC~~
10 ~~SERVICES.~~ *overruling*

11 THE COURT: WE'RE GOING TO CALL NOW AND FIND OUT THE DATE.
12 AND THEN I'LL HAVE A DATE SET FOR YOU TO REPORT FOR THE
13 HEARING. AND THAT WILL BE IN FRONT OF JUDGE KRAUEL DOWNTOWN, ON
14 THE MENTAL HEALTH CALENDAR.

15 SO WE'LL JUST BE IN RECESS FOR A MOMENT WHILE WE
16 MAKE THAT PHONE CALL.

17 MR. ADAIR: YES, YOUR HONOR.

18 (RECESS TAKEN.)

19 THE COURT: ALL RIGHT. BACK ON THE RECORD.

20 AND MR. BURTON, JUST SO YOU UNDERSTAND HOW THIS
21 WILL PROCEED. ~~[REDACTED]~~

22 I'M ORDERING A SPECIAL HEARING IN WHICH A DETERMINATION WILL
23 BE MADE ABOUT YOUR ABILITY TO STAND TRIAL. AND IF YOU ARE
24 FOUND MENTALLY ABLE TO DO SO, THEN THE CRIMINAL PROCEEDINGS
25 WILL CONTINUE. IF YOU'RE FOUND MENTALLY INCOMPETENT TO
26 STAND TRIAL, YOU'LL BE PLACED IN THE HOSPITAL OR OTHER
27 SUITABLE FACILITY UNTIL SUCH TIME AS YOU ARE ABLE TO STAND
28 TRIAL.

1 MR. ADAIR, DO I NEED TO ADVISE HIM OF HIS
2 CONSTITUTIONAL STATUTORY RIGHTS ON THE RECORD?

3 MR. ADAIR: NO, YOUR HONOR.

4 THE COURT: ALL RIGHT. [REDACTED]
[REDACTED]
[REDACTED]

7 THE CLERK: THE EXAMINATION DATE WILL BE APRIL 8TH, '05,
8 AT 8 A.M., IN ROOM 1003. HEARING DATE WILL BE 4-27-05,
9 9 A.M., DEPARTMENT 57.

10 THE COURT: THEN IS THERE ANYTHING ELSE THAT NEEDS TO BE
11 PLACED ON THE RECORD BEFORE WE ARE IN RECESS?

12 ALL RIGHT. WE ARE IN RECESS.
[REDACTED]
[REDACTED]

15 MS. HANNAH: OKAY.

16 THE COURT: BAIL WILL REMAIN AS SET.

17 (NEXT PAGE NUMBER IS 251. [REDACTED])

18 (AT 9:30 A.M., THE PROCEEDINGS WERE ADJOURNED.)

19 * * *

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO
EAST COUNTY DIVISION

DEPARTMENT 11

HON. HERBERT J. EXARHOS, JUDGE

THE PEOPLE OF THE STATE OF
CALIFORNIA,

PLAINTIFF,

VS.

ERIC BURTON,

DEFENDANT.

CASE NO. SCE238643

REPORTER'S TRANSCRIPT

JUNE 1, 2005

APPEARANCES:

FOR THE PLAINTIFF:

~~KRISTIAN TROCHA,~~
DEPUTY DISTRICT ATTORNEY

FOR THE DEFENDANT:

CHARLES ADAIR,
PRIVATE CONFLICT COUNSEL

TERESA MENDOZA
CSR NO. 12947
PRO TEM REPORTER
EL CAJON, CALIFORNIA



ERIC WILTON BURTON DEFENDANT # 4112831-7A04
 PO. BOX 122952
 SAN DIEGO, CA 92112-2952
 619-615-2700
 IN PROPER

211

case no
 SCE238643 01

0121

SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN DIEGO
 EAST COUNTY DIVISION

F L E D
 Clerk of the Superior Court
 MAY 27 2005
 By: K. FAHEY, Deputy

People of the State of California
 plaintiff

ERIC W. BURTON

DEFENDANT

Notice to the People of
 the State of California
 County of San Diego

NOTICE OF MOTION
 Date 01 JUN 05
 TIME 9:00 AM
 DEPT. SUPERIOR COURT
 EAST COUNTY DIVISION

Motion to substitute
 counsel effective with
 05, 6th amendment, Const.

Motion to suppress evidence
 in violation of Miranda
 Fruit of 20 poisonous tree
 in violation of 4th amendment
 U.S. Const, 5th amendment
 Miranda due process
 clause

Motion for 1538.5
 suppression hearing
 suppress vehicle and
 NOTES, BOOK, and other
 STATEMENTS, ADMISSIONS
 VIDEO TAPE, AUDIO,
 BELT BULLETS as a
 result of 4th amendment
 violation of unlawful
 entry, unwarranted
 search and seizures

MOTION TO GET AND
 and dismiss charges
 pursuant to PC 995
 set aside + dismiss
 Motion to review

1538.5 hearing

Motion for continuance
 1051-1054

Brady v Maryland
 Motion for 1538.5
 6th amendment US Const.
 Maryland Motion

To Bonnie Dumanis District Attorney
 for the County of San Diego and her
 designated representative
 Please take notice that on the above
 date and time, or as soon thereafter
 as the matter may be heard in the above
 court, the defendant, ERIC W. BURTON will
 move the court to substitute counsel
 and hear all other motions
 listed motion

This Motion is based upon this
 Notice of motion and Motion, the attached
 Memorandum of Points and Authorities
 Declaration of Eric Wilton Burton
 The Court files and records of the case
 including the court reporters transcript for continuance
 from preliminary hearing, 1538.5 hearing to get
 any evidence, testimony or authorities to be
 presented at the hearing of this
 motion and the argument of Counsel

(62)

HERE

1 EL CAJON, CALIFORNIA, WEDNESDAY, JUNE 1, 2005

2
3 THE BAILIFF: 211, ERIC BURTON.

4 THE COURT: PEOPLE VERSUS ERIC BURTON.

5 MR. ADAIR: GOOD AFTERNOON, CHARLES ADAIR FOR
6 MR. BURTON, WHO IS PRESENT BEFORE THE COURT.

7 THE COURT: THE DEFENDANT IS BEFORE THE COURT
8 FOR CRIMINAL PROCEEDINGS, HAVING BEEN REINSTATED,
9 AND IT'S A MATTER OF SETTING THE MATTER FOR TRIAL
10 AND READINESS, CORRECT?

11 MR. ADAIR: THAT'S CORRECT, YOUR HONOR.

12 MR. BURTON ALSO WANTED TO BRING A MARSDEN
13 MOTION.

14 THE COURT: ARE YOU APPOINTED, MR. ADAIR?

15 MR. ADAIR: YES, I WAS, YOUR HONOR.

16 THE COURT: OKAY. ALL RIGHT. I'VE GOT THIS
17 HANDWRITTEN MOTION HERE. [REDACTED]

18 [REDACTED] WE WILL DEAL WITH THE
19 MARSDEN MOTION, AT THIS TIME. SO WE WILL CLEAR THE
20 COURTROOM AND PROCEED WITH THAT HEARING.

21 THE RECORD WILL REFLECT THAT THIS IS A
22 CLOSED HEARING. ALL PERSONS HAVE BEEN -- ALL
23 PERSONS, SPECTATORS, ~~THE DISTRICT ATTORNEY HAVE BEEN~~
24 ~~EXCLUDED~~. PRESENT ONLY ARE THE DEFENDANT, ERIC
25 BURTON, HIS ATTORNEY OF RECORD, CHARLES ADAIR, COURT
26 PERSONNEL AND STAFF.

27 MR. BURTON, THIS IS A CLOSED HEARING,
28 THEREFORE, YOU MAY SPEAK FREELY TO ME, MR. BURTON --

1 NOT YET, I'LL LET YOU KNOW WHEN. AT THE CONCLUSION
 2 OF THESE PROCEEDINGS IT IS ORDERED THAT THE COURT
 3 REPORTER SEAL HER NOTES. THOSE NOTES ARE NOT TO BE
 4 TRANSCRIBED UNLESS THIS COURT OR A COURT OF
 5 COMPETENT JURISDICTION SHOULD ORDER SUCH
 6 TRANSCRIPTION.

7 MR. BURTON, YOU HAVE INDICATED THAT IT IS
 8 YOUR DESIRE TO DISCHARGE MR. ADAIR AS YOUR ATTORNEY
 9 OF RECORD; IS THAT CORRECT?

10 THE DEFENDANT: THAT IS CORRECT, SIR.

11 THE COURT: ALL RIGHT. ~~TO DO THAT YOU MUST BE~~
 12 ~~SPECIFIC AS TO THE REASONS WHY YOU THINK HE SHOULD~~
 13 ~~BE DISCHARGED. IN OTHER WORDS, WHAT HAS HE DONE THAT~~
 14 ~~YOU FEEL THAT HE SHOULD NOT HAVE DONE OR VICE VERSA~~
 15 ~~OR WHAT HE HAS NOT DONE THAT YOU FEEL HE SHOULD HAVE~~
 16 ~~DONE? WHY DO YOU THINK HE SHOULD BE DISCHARGED AS~~
 17 ~~YOUR ATTORNEY OF RECORD?~~

18 THE DEFENDANT: I HAVE RECKLESS
 19 MISREPRESENTATION ~~CONFIDENTIAL~~ CONFLICT OF INTEREST,

20 ~~A REFUSAL OF MR. ADAIR TO COMMUNICATE WITH ME, BY~~

21 ~~THE COURT: I HAVE RECKLESS MISREPRESENTATION, CONFLICT OF INTEREST,~~

22 ~~HE SAID THAT ON MARCH THE 24TH, HE WAS COMING THAT~~

23 ~~EVENING TO SEE ME, I HAD NOT SEEN NOR HEARD FROM HIM~~

24 ~~THE COURT: I HAVE RECKLESS MISREPRESENTATION, CONFLICT OF INTEREST,~~

25 ~~HE DID NOT COMMUNICATE WITH ME, HE SAID THAT HE~~

26 ~~WAS TOLD THAT HE COULD NOT. PERTAINING TO MY SIXTH~~

27 ~~AMENDMENT RIGHTS, FROM WHAT I UNDERSTAND, NO ONE CAN~~

28 ~~PREVENT A CLIENT FROM HAVING CONTACT WITH HIS~~

1 ATTORNEY. ALSO, I HAVE SOME MOTIONS AND SOME PAPERS

3 THE COURT: WE'RE NOT GOING TO GO INTO THE
4 MOTION HERE, MR. BURTON.

6 * THE COURT: WE WILL ONLY DEAL WITH THE MARSDEN
7 HEARING AT THIS TIME --

8 ~~RECOGNIZE YOU AND ALLOW YOU TO BE HEARD~~

9 ~~WITH HEAR ANYTHING YOU WANT TO SAY ABOUT THIS~~

10 ~~RELEVANT AND LIMITED TO THE COURT~~ I

11 ~~CANNOT HEAR YOUR MOTIONS BECAUSE THE DISTRICT~~

12 ~~ATTORNEY IS NOT PRESENT IN THESE PROCEEDINGS. THIS~~

13 ~~PROCEEDING IS CLOSED ONLY FOR THE PURPOSE OF YOUR~~

14 MARSDEN HEARING WHICH, I NOTE, FOR THE RECORD, HAS

15 BEEN BROUGHT BEFORE. SO DO YOU HAVE ANYTHING

16 FURTHER TO SAY AS TO WHY MR. ADAIR SHOULD BE

17 DISCHARGED AS YOUR ATTORNEY OF RECORD?

18 THE DEFENDANT: YES, SIR.

19 THE COURT: GO AHEAD.

20 THE DEFENDANT: ~~MR. ADAIR WHEN HEARD PARK AND~~

21 ~~GO A FALSE STORY AND ENTERED IT INTO THE RECORD~~

22 ~~THE MARSDEN COURT AT THE LAST HEARING. A STORY~~

23 ~~WHICH WE BELIEVED THAT, I BELIEVE, PREJUDICED THE~~

24 COURT AGAINST ME. ~~HE STATED~~ ~~WORKING WITH~~

25 ~~UNWITTINGLY. I WANTED THE MOTION TO HAVE THE MARSDEN~~

26 ~~UNSEALED FOR REVIEW TO SUPPORT MY ACCUSATIONS. BOTH~~

27 ~~MARSDENS, FROM THE ONE WHICH MY ATTORNEY WAS~~

28 ~~BELIEVED AND MR. ADAIR BECAUSE I SPOKE WITH~~

(A)

1 MR. ADAIR, LET ME FINISH, SIR. I'M SORRY. HE WENT
2 THIRD-PARTY AND GOT A --

3 ~~THE COURT: WHO'S THIS THIRD PARTY, WE'RE~~
4 ~~TALKING ABOUT?~~

5 ~~THE DEFENDANT: HE'S STATE INTERPOSED.~~

6 ~~THE COURT: WHO'S?~~

7 ~~THE DEFENDANT: HE'S STATE INTERPOSED.~~

8 ~~THE COURT: SO WHAT ARE YOU SAYING, MR. ADAIR~~
9 ~~WENT TO TALK TO THIS PERSON?~~

10 ~~THE DEFENDANT: HE'S STATE INTERPOSED.~~

11 THE COURT: SO?

12 THE DEFENDANT: TO REINTRODUCE SUPPRESSED
13 EVIDENCE AND SO THE PROSECUTION COULD USE IT AGAINST
14 ME.

15 THE COURT: MR. ADAIR, YOU ARE SAYING, IS
16 WORKING FOR THE PROSECUTION?

17 ~~THE DEFENDANT: HE'S STATE INTERPOSED.~~

18 THE COURT: IS THAT WHAT YOU ARE SAYING?

19 ~~THE DEFENDANT: YES, SIR.~~

20 ~~SAYING THAT.~~ I AM SAYING HE'S STATE INTERPOSED.

21 THE COURT: HE'S WHAT?

22 MR. ADAIR: HE'S STATE INTERPOSED.

23 THE COURT: STATE INTERPOSED?

24 THE DEFENDANT: HE'S COURT APPOINTED.

25 THE COURT: HE'S WHAT?

26 THE DEFENDANT: HE IS COURT APPOINTED. IF THE
27 JUDGE WOULD BE PATIENT WITH ME, I CAN GET TO IT.

28 THE COURT: ~~HE'S COURT APPOINTED.~~

1 ~~NO ONE IS SUPPOSE TO UNDERSTAND THE OTHER ONE'S DO~~

2 NOW YOU STATE THAT HE IS STATE INTERPOSED BECAUSE HE
3 IS COURT APPOINTED, WHAT DOES ALL THAT MEAN?

4 THE DEFENDANT: IT MEANS THAT WHEN I AM ALLOWED
5 TO MAKE MY POINT HERE ON WHAT HE DID, IF YOU WOULD
6 BE A LITTLE BIT MORE --

7 THE COURT: ALL RIGHT. MAKE YOUR POINT.

8 THE DEFENDANT: HE WENT AND TOLD THE COURT THAT

9 ~~HE WENT AND TOLD THE COURT THAT~~
10 WHICH WAS NOT TRUE AND THEN I --

11 THE COURT: TOLD WHAT COURT?

12 THE DEFENDANT: HE TOLD THE JUDGE AT MY LAST
13 COURT --

14 THE COURT: JUDGE HALGREN?

15 ~~HE WENT AND TOLD THE COURT THAT~~
16 THE COURT: OKAY.

17 THE DEFENDANT: I BELIEVE THAT WAS HER NAME.

18 ~~HE WENT AND TOLD THE COURT THAT~~
19 WHICH IS TOTALLY FALSE. HE DID NOT GET THAT FROM ME
20 AND I WAS TOTALLY BLOWN AWAY WHEN IT CAME OUT OF HIS
21 MOUTH. AND I WAS UTTERLY SURPRISED. HE HAD NEVER
22 DISCUSSED CALLING THIS WITNESS WITH ME. HE
23 MANIPULATED ME TO DO A PEREMPTORY CHALLENGE BEFORE
24 JUDGE EXARHOS AND WHEN I --

25 THE COURT: I'M JUDGE EXARHOS. HAVE I BEEN
26 PEREMPTORY CHALLENGED? HAVE I BEEN CHALLENGED IN
27 THIS MATTER, MR. ADAIR?

28 MR. ADAIR: NO, YOUR HONOR.

1 THE DEFENDANT: WHAT I AM SAYING, SIR -- EXCUSE
2 ME, IS THAT HE CAME BEFORE YOU. [REDACTED]

3 [REDACTED] CANNOT SEE YOUR [REDACTED] OF ANYTHING. I'M SORRY,
4 SIR. HE CAME TO YOU, HE MANIPULATED ME TO GET A
5 PEREMPTORY CHALLENGE. [REDACTED] THE JUDGE WE WERE

6 [REDACTED] MAY BE PREJUDICED AGAINST [REDACTED] CASE
7 [REDACTED] FOR THE APPELLATE COURT AS A PROSECUTOR.

8 [REDACTED] THE COURT: [REDACTED] YOU TALKING ABOUT?

9 [REDACTED] THE DEFENDANT: [REDACTED]

10 THE COURT: [REDACTED] WAS A PEREMPTORY
11 CHALLENGE FILED IN THIS CASE?

12 MR. ADAIR: IT WAS, YOUR HONOR.

13 THE COURT: AGAINST WHO?

14 MR. ADAIR: AGAINST JUDGE --

15 THE COURT: HANOIAN?

16 MR. ADAIR: HANOIAN. YES, YOUR HONOR.

17 [REDACTED] BUILDING [REDACTED] MAY AT THAT TIME, WE SAW [REDACTED]
18 [REDACTED] TO THE COURT [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
19 [REDACTED] PLACES BEFORE [REDACTED] AND [REDACTED] [REDACTED] [REDACTED] [REDACTED]

20 [REDACTED] HE IS CAUTIONING A WITNESS THAT WAS

21 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

22 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

23 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

24 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

25 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

26 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

27 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

28 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

1 THAT I WAS HOPEFULLY SURPRISED, I WOULD BE BOUND WHEN I
 2 HEARD THAT COMING FROM HIS MOUTH, THAT HE NEVER
 3 INDICATED THAT FROM ME, I HAD A RIGHT TO DO SO.
 4 AND I BELIEVE IT, "WHY WOULD I BELIEVE A
 5 WITNESS TO BE A PERSON WHO WOULD BE A WITNESS
 6 TO A PERSON WHO WOULD BE A WITNESS TO A PERSON
 7 WHO WOULD BE A WITNESS TO A PERSON WHO WOULD BE A WITNESS
 8 ON THE RECORD, BEFORE I CALLED MY MARSDEN, I STATED
 9 MY INTENTION TO GO PRO PER AT THAT TIME PER MY SIXTH
 10 AMENDMENT RIGHTS. AND I BELIEVE THE COURT ERRORED
 11 IN DENYING ME MY RIGHT TO GO PRO PER. [REDACTED]
 12 [REDACTED] CAUSE I [REDACTED]
 13 TO [REDACTED] ISSUE UP, AND [REDACTED] ME [REDACTED]
 14 [REDACTED] [REDACTED] [REDACTED] [REDACTED]
 15 [REDACTED] I [REDACTED] [REDACTED] [REDACTED] [REDACTED]
 16 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
 17 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
 18 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
 19 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

20 JUDGE PRECKEL STATED THAT HE FOUND ME
 21 COMPETENT. FROM MY UNDERSTANDING, IF THE DEFENDANT
 22 IS COMPETENT AND HE HAS MADE A TIMELY MOTION TO GO
 23 PRO PER, HE HAS THAT RIGHT TO DO SO. I MADE A
 24 TIMELY MOTION TO GO PRO PER AND I BEGAN TO EXPLAIN
 25 THAT TO THE JUDGE, BUT I WAS, I FELT THE COURT AND
 26 MR. ADAIR WERE OVERREACHING AND PLACED ME UNDER A
 27 1368 HOLD AND ORDERED ME TO UNDERGO A COMPETENCY
 28 HEARING. [REDACTED]

5 HOWEVER, I WAS FOUND COMPETENT. [REDACTED]

6 [REDACTED] I FELT
7 THAT THE COURT ERRORED AND VIOLATED MY SIXTH
8 AMENDMENT RIGHTS, THE JUDGE ALSO VIOLATED MY 14TH
9 RIGHTS TO DUE PROCESS, [REDACTED] I'D LIKE TO MOTION
10 THE COURT TO RELEASE ME FROM CUSTODY. I HAVE BEEN
11 UNLAWFULLY DETAINED.
12

13 THE COURT: NOW, MR. BURTON, [REDACTED]
14 [REDACTED]
15 [REDACTED] WE'RE NOT HERE ON UNLAWFUL
16 DETENTION OR PRO PER RIGHTS. [REDACTED]

17 [REDACTED]
18 [REDACTED] OF RECORD.

19 THE DEFENDANT: YES, YOUR HONOR. [REDACTED]
20 [REDACTED] ALSO, I KNOW A LETTER [REDACTED]

21 [REDACTED] I WOULD
22 NOT TAKE THE RISK, BECAUSE [REDACTED]

23 [REDACTED] A
24 [REDACTED]

25 [REDACTED]
26 [REDACTED]

27 THE COURT: OKAY. ALL RIGHT. ANYTHING FURTHER?

28 THE DEFENDANT: YES. ALSO, MR. ADAIR HAS BEEN

(69)

1 MY ATTORNEY FOR APPROXIMATELY SIX MONTHS. HE HAS
 2 FAILED TO GATHER MEDICAL EVIDENCE WHICH WOULD
 3 SUPPORT MY DEFENSE. I HAVE WITNESSES THAT I WANT
 4 SUBPOENAED. HE HAS, BASICALLY, I FELT, GIVEN ME AN
 5 INEFFECTIVE ASSISTANCE. THERE IS EVIDENCE THAT THE
 6 PROSECUTION IS SUPPRESSING THAT THE DEFENSE NEEDS TO
 7 EXAMINE, [REDACTED] MR. THOMAS [REDACTED]
 8 [REDACTED] THAT I WANTED TESTED FOR ILLEGAL
 9 SUBSTANCES AND ALCOHOL. [REDACTED]

10 [REDACTED] INTERVIEW THAT [REDACTED]
 11 [REDACTED] [REDACTED] [REDACTED]
 12 MR. [REDACTED] HAD [REDACTED] THAT WAS ENTERED IN AS EVIDENCE
 13 [REDACTED] I HAD NEVER HEARD. THE COMMUNICATION IS VERY
 14 POOR. THERE ARE PHONE CALLS THAT HAVE NOT BEEN
 15 ACCEPTED WHEN I WOULD CALL. [REDACTED]

16 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
 17 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
 18 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
 19 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
 20 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
 21 THE COURT: HOW MANY ATTORNEYS HAVE YOU ALREADY
 22 HAD, MR. BURTON?

23 [REDACTED] [REDACTED] MR. [REDACTED] WOULD BE MY FOURTH
 24 [REDACTED]

25 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
 26 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
 27 THE DEFENDANT: WELL, SIR, VIC ERIKSEN WAS THE
 28 FIRST AND HE HAD A CONFLICT BECAUSE HE REPRESENTED

(70)

1 MR. THOMAS. I SAT IN JAIL FOR TWO WEEKS AND HAD NOT
 2 MET WITH AN ATTORNEY. THE NEXT ATTORNEY WAS
 3 MR. PLUMMER, [REDACTED] THROUGH MARS DEN
 4 BECAUSE HE DID A MOTION, FRUIT OF THE POISONOUS
 5 TREE, [REDACTED] I CANNOT
 6 BEGIN WITH A MIRANDA VIOLATION, [REDACTED] BEGIN WITH
 7 A FOURTH AMENDMENT VIOLATION. [REDACTED]
 8 "ALL ITEMS SEIZED" WHICH DEEMED THE MOTION TO BE AN
 9 [REDACTED]

10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 I WAS THEN ASSIGNED AN ATTORNEY NEWTON,
 14 [REDACTED]
 15 [REDACTED]

16 ALLEGED CODEFENDANT AND HE REPRESENTED HIM THE DAY OF MY
 17 PRELIMINARY HEARING, [REDACTED]
 18 [REDACTED] CONFLICT OF INTEREST AND THEN I
 19 WAS ASSIGNED MR. ADAIR.

20 THE COURT: ANYTHING ELSE ON YOUR MARS DEN
 21 HEARING, ON YOUR MARS DEN MOTION?

22 THE DEFENDANT: THAT'S PRETTY MUCH IT, SIR.

23 THE COURT: MR. ADAIR, PLEASE RESPOND, AMONG
 24 OTHER THINGS, TO THE COMMUNICATION ALLEGATION AND
 25 THE THIRD-PARTY AND THE ACCUSATION THAT YOU'RE
 26 SEEKING TO INTRODUCE EVIDENCE THAT HAS OTHERWISE
 27 BEEN EXCLUDED, IF I UNDERSTAND CORRECTLY?

28 MR. ADAIR: AS FAR AS COMMUNICATION, YOUR HONOR,

1 I MET WITH MR. BURTON A NUMBER OF TIMES. I HAVE
 2 ALSO DONE VIDEO CONFERENCING AND TALKED TO HIM ON THE
 3 TELEPHONE. THESE CALLS WOULD NOT BE MADE IF
 4 THERE'S NOBODY IN THE OFFICE. OTHERWISE, TYPICALLY,
 5 WOULD BE. I AM SURE THERE WERE TIMES HE'S CALLED
 6 WHEN I WASN'T IN THE OFFICE AND NOT
 7 TAKEN THE CALL. I CAN'T SAY FOR SURE ON A
 8 REGULAR BASIS. I CAN'T SAY FOR SURE A
 9 SPECIFIC DATE, BUT I KNOW HE WAS IN COUNTY JAIL DOWNTOWN
 10 AND HAD BEEN THERE FOR SOME TIME BEFORE THE TWO
 11 MEETINGS TO SEE HIM. BEFORE THAT, I HAD NOT MET WITH
 12 HIM DURING THE PENDENCY OF THE COMPETENCY HEARING.
 13 BUT WE WENT THROUGH, I THINK, ONE HEARING
 14 WHICH HE THEN REMAINED IN JAIL BECAUSE HE DIDN'T
 15 FILED AN ANSWER TO THE PENDING COMPLAINT.
 16 THE FIRST TIME HE WENT TO COURT HE WENT TO MEET
 17 TO THE DOCTORS. AS FAR AS THE HEARING, I
 18 BE MORE SPECIFIC, I DON'T HAVE THE DATES I HAVE MET
 19 WITH MR. BURTON WITH ME. I DON'T HAVE THEM IN AN
 20 ORGANIZED FASHION.

21 AS FAR AS TRYING TO INTRODUCE EVIDENCE THAT
 22 HAS BEEN SUPPRESSED, I AM NOT SURE WHAT MR. BURTON
 23 IS REFERRING TO CONCERNING THAT. I
 24 DON'T KNOW WHAT HE IS SAYING. I AM NOT SURE ON OCCASION
 25 HE DOES CHANGE HIS MIND. ON DIFFERENT OCCASIONS
 26 BY PROVIDING THE INFO. I CAN'T SAY FOR SURE. I CAN ONLY
 27 SPEAK CONCERNING THE MEETINGS. I CAN'T SPEAK CONCERNING ANY OTHER
 28 MATTERS. I AM NOT SURE WHAT HE IS SAYING. I AM NOT SURE.

1 CONCERNING DIFFERENT THINGS AND MY RESPONSE TO THEM.

2 THE COURT: I'M NOT SURE I FOLLOW YOU, AS TO
3 EVIDENTIARY MATTERS, DISAGREEMENTS BETWEEN THE TWO
4 OF YOU ON EVIDENTIARY MATTERS?

5 MR. ADAIR: PRETTY MUCH, YOUR HONOR.

6 THE COURT: I ACKNOWLEDGE THAT THERE MAY BE
7 DISAGREEMENTS AS TO EVIDENTIARY MATTERS. THAT GOES
8 TO THE ATTORNEY/CLIENT RELATIONSHIP. I AM MOST
9 CONCERNED ABOUT THE ACCUSATION OF THE COMMUNICATION,
10 ~~WHICH DOES NOT APPEAR TO BE A PROBLEM~~ AND THE
11 ACCUSATION THAT YOU ARE NOT WORKING IN HIS BEST
12 INTEREST BY SEEKING TO INTRODUCE EVIDENCE OR
13 ASSISTING THE DISTRICT ATTORNEY, ~~_____~~

14 ~~_____~~
15 MR. ADAIR: ~~_____~~ WORKING WITH
16 MR. BURTON. ~~_____~~ HE WANTS CERTAIN
17 THINGS DONE, ~~_____~~

18 ~~_____~~
19 ~~_____~~
20 ~~_____~~
21 ~~_____~~
22 ~~_____~~
23 ~~_____~~
24 ~~_____~~
25 ~~_____~~
26 ~~_____~~
27 ~~_____~~
28 THE COURT: ANYTHING FURTHER, MR. BURTON?

1 THE DEFENDANT: YES, SIR, YOUR HONOR. THE ISSUE

2 ~~THAT I AM PARTICIPATING IN THIS CASE IS NOT THE FACT THAT MY~~

3 ~~MEDICATION. ALTHOUGH MY MEDICATION HAS A LOT OF~~

4 ~~ADVERSE REACTIONS THAT I WANTED HIM TO RETRIEVE MY~~

5 ~~HEALTH RECORDS TO BE ABLE TO INTRODUCE~~

6 ~~MEDICATION. BUT THE FACT OF MY VISUAL DAMAGE TO MY~~

7 ~~EYES I HAVE BEEN LEGALLY BLIND SINCE MARCH 2002.~~

8 ~~HE HAS NOT CONFIRMED WITH ME WHETHER HE HAS RETRIEVED THOSE RECORDS OR NOT, TO~~

9 EVIDENCE. I HAVE APPROXIMATELY FOUR TO FIVE DOCTORS

10 THAT I HAVE SEEN THAT I HAVE ALREADY GIVEN HIM

11 PERMISSION TO GET THE RECORDS FROM THAT WAS OVER

12 THREE OR FOUR MONTHS AGO. HE HAS NOT CONFIRMED WITH

13 ME WHETHER HE HAS RETRIEVED THOSE RECORDS OR NOT, TO

14 THIS DAY. I ONLY WANT SOME KIND OF CONFIRMATIONS AND

15 COMMUNICATION.

16 THE COURT: ALL RIGHT.

17 MR. ADAIR: WE DID SUBPOENA A NUMBER OF RECORDS,

18 I BELIEVE, YOUR HONOR, BUT THAT MAY BE IN THE COURT

19 IN THE HANDS OF THE COURT AT THIS TIME.

20 THE COURT: NOW, MR. ADAIR, THIS MATTER WAS SENT

21 OUT FOR TRIAL A COUPLE OF MONTHS AGO AND IT WAS ON

22 THE EVE OF THAT TRIAL OR THE DAY OF THAT TRIAL THAT

23 CRIMINAL PROCEEDINGS WERE SUSPENDED. SO IS IT A

24 FAIR ASSUMPTION TO SAY THAT YOU WERE PREPARED FOR

25 TRIAL AT THAT TIME?

26 MR. ADAIR: I BELIEVE SO, YOUR HONOR. YES, SIR.

27 THE COURT: AND ERGO, YOU WILL BE PREPARED FOR A

28 FUTURE TRIAL DATE?

2 THE COURT: NOW, MR. BURTON,

9 THE DEFENDANT: [REDACTED] MY POINT IS, YOUR
10 HONOR, THAT I'M INNOCENT OF ALL CHARGES. [REDACTED]

12 THE COURT: OKAY. FINE. NOW, STOP.

13 MR. ADAIR IS OBLIGATED TO COMMUNICATE WITH

15 ALSO OBLIGATED TO GIVE YOU THE BENEFIT OF HIS
16 PROFESSIONAL OPINION. ~~THAT~~

~~18. WITH THE THOUGHT ABOUT IT, SOBERLY, THE DECISION~~
~~19. IS YOURS TO PLEASE FEEL OR NOT CONCERNED,~~

20 YOU HAVE CHOSEN TO PLEAD NOT GUILTY AND MAINTAIN
21 YOUR INNOCENCE. SO YOU HAVE THE ABSOLUTE RIGHT TO
22 DO SO. [REDACTED]

~~23 - [REDACTED] - [REDACTED] - [REDACTED]~~

24 ~~REDACTED~~

25 ~~REDACTED~~

26 ~~THE COURT: I KNOW WHAT A PLEA IS. DON'T GO~~

27 ~~CONFIDENTIAL - NOFORN - UNCLASSIFIED - CONTROL~~

28 [REDACTED]

2 [REDACTED]
 3 THE COURT: ANYTHING FURTHER, MR. BURTON?

4 THE DEFENDANT: THE PROBLEM IS, SIR, THAT I WAS
 5 UNLAWFULLY ARRESTED AND DETAINED.

6 THE COURT: I DON'T WANT TO GO INTO THE FACTS OF
 7 THE CASE. [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED] NOW, MR. BURTON, YOU COMPLAINED ABOUT THE

12 LACK OF COMMUNICATION, [REDACTED] IT'S HABITUAL

13 TO COMMUNICATE WITH YOU [REDACTED]

14 [REDACTED] EVER SINCE I GO TO WORK. [REDACTED]

15 [REDACTED] MOTION [REDACTED]

16 [REDACTED] THERE IS NO BASIS TO DISCHARGE

17 MR. ADAIR AT THIS TIME. [REDACTED]

18 [REDACTED] HE WILL BE RELEASED, [REDACTED] LOOKING OUT

19 FOR YOUR BEST INTEREST. YOU ARE A DIFFICULT CLIENT.

20 BUT, NOTWITHSTANDING THAT, HE IS HANGING IN THERE

21 AND WILL DO A COMMENDABLE JOB. YOUR MOTION TO

22 DISCHARGE HIM AS YOUR ATTORNEY OF RECORD IS DENIED.

23 [REDACTED]

24 [REDACTED]

25 NOW, WE WILL BE OPEN AGAIN TO THE DISTRICT

26 ATTORNEY.

27 WE ARE AGAIN IN SESSION, PRESENT IS THE

28 DISTRICT ATTORNEY, MR. TROCHA. THE PURPOSE OF THE

1 HEARING NOW IS TO SET A TRIAL DATE AFTER CRIMINAL
2 PROCEEDINGS HAVE BEEN REINSTATED. THE TRIAL WILL BE
3 ON MONDAY, JULY 11TH. IS THAT DATE GOOD FOR YOU,
4 MR. ADAIR?

5 MR. ADAIR: THAT'S NOT THE BEST. COULD I
6 SUGGEST THE 19TH, WOULD THAT BE AVAILABLE? IF I
7 COULD ADD ONE FACTOR, YOUR HONOR, WITH JUDGE HALGREN

8 ~~WE DID GO THROUGH IT, I THINK, NUMEROUS, IN LEMME~~
9 ~~MOTIONS WITH HER.~~ WHETHER OR NOT YOU WANT TO ASSIGN
10 IT BACK TO HER.

11 THE COURT: SHE WILL PROBABLY BE AVAILABLE THEN.
12 AND I PROBABLY WILL DO THAT. IF IT'S THE 19TH, I
13 NEED A TIME WAIVER -- I DON'T KNOW IF MR. BURTON IS
14 WILLING TO DO THAT. IF IT'S THE 11TH, I HAVE 11
15 DAYS REMAINING. IF I SET IT FOR THE 19TH I HAVE
16 THREE DAYS REMAINING. IF YOU WANT IT ON THE 19TH, I
17 CAN DO THAT WITH OR WITHOUT A TIME WAIVER.

18 MR. ADAIR: HE'D PREFER NOT TO WAIVE TIME.

19 THE COURT: ALL RIGHT. YOU STILL WANT IT ON THE
20 19TH, MR. ADAIR?

21 MR. ADAIR: YES, SIR.

22 THE COURT: WITH THREE DAYS REMAINING?

23 MR. ADAIR: YES, SIR.

24 THE COURT: TUESDAY, JULY 19TH, 9 O'CLOCK A.M.,
25 IN THIS DEPARTMENT.

26 MR. ADAIR: ALSO, THERE MAY BE, AS WE DISCUSSED,
27 THERE MAY BE SOME RECORDS THAT I HANDED TO THE COURT
28 PURSUANT TO SUBPOENA, IF THOSE COULD BE RELEASED TO

78

JUNE 1ST ~~MASSACHUSETTS~~ REINSTATEMENT
OF CRIMINAL PROCEEDINGS.
DA MR. TROCHA PRESENT

268

1 ME?

2 ~~THE COURT: COPIED AND SHARED WITH THE DISTRICT~~

3 ~~ATTORNEY?~~

4 ~~MR. ADAIR: YES, SIR --~~

5 ~~ATTORNEY TO USE THE RECORDS THAT I HAVE~~

6 COURT: WHO ARE THEY FROM?

7 ADAIR: THEY'RE MR. BURTON'S MEDICAL

8 RE ~~THE DISTRICT AND THE DISTRICT CLERK'S OFFICE~~

9 ~~RECORDS THAT I HAVE~~

10 COURT: THEY HAVE BEEN SENT TO THE COURT

11 ANY OBJECTION?

12 ADAIR: CORRECT, YOUR HONOR.

13 ~~AT COURT: THEN THEY WILL BE RELEASED TO YOU~~
ALLEGED

14 MR. TROCHA: THEY'RE THE VICTIM'S POLICE

15 ORDS..

16 THE COURT: WELL, HE SAYS THEY'RE MEDICAL

17 ~~AS TO HIS REPORT.~~

18 ~~MR. ADAIR: TO THE DISTRICT RECORDS OF THE~~

19 ~~RECORDS~~

20 THE COURT: SHOULDN'T THOSE BE COPIED AND

21 RECD?

22 MR. ADAIR: I HAVE NO PROBLEM WITH THAT, YOUR

23 HONOR.

24 THE COURT: ALL RIGHT. WHAT I AM TRYING TO DO

25 FIGURE OUT A WAY TO GET THIS BACK TO JUDGE

26 HALGREN, WHO IS FILLING IN IN A FAMILY LAW

27 ASSIGNMENT WHICH, HOPEFULLY, WILL BE DONE BY THEN.

28 I AM GOING TO ASSIGN IT BACK TO JUDGE HALGREN AND

(76)

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1 JUDGE HALGREN FOR THAT PERIOD OF TIME. GO DOWN
2 TALK TO HER. TELL HER I WANT TO ASSIGN IT TO
3 HER AND TELL HER I WILL HAVE SOMEONE ASSIGNED. SHE
4 MOST FAMILIAR WITH IT. DON'T DO IT IN TERMS OF
5 KING OR TELLING HER. YOU NEED TO WORK OUT THE
6 SCHEDULING. I AM COGNIZANT THAT SHE WILL BE
7 ASSIGNED TO 3. BUT WE WILL WORK SOMETHING ELSE OUT,
8 SHE CAN DO THIS.

9 MR. ADAIR: SO TELL HER THAT IT WILL BE
10 SIGNED?

11 THE COURT: YES.

12 MR. ADAIR: YES, SIR.

13 THE COURT: AND I WILL COVER THREE FOR HER,

14 ~~BECAUSE SHE HAS DONE THE PRELIMINARY MOTIONS AND WE~~
15 DON'T NEED TO REINVENT THE WHEEL. SHE IS IN 7. GO
16 TALK TO HER. GET AHOLD OF MS. HANNA, HAVE HER AND
17 MR. ADAIR GO TALK TO HER.

18
19 (THE PROCEEDINGS WERE CONCLUDED.)
20
21
22
23
24
25
26
27
28
29

MR. ADAIR: YES, YOUR HONOR.

MR. ADAIR: IT'S FUN BEING A PROSECUTOR.

ALL RIGHT. LET'S TALK ABOUT EXHIBITS. WE
ALLY IN MY VIEW NEED TO DO THIS ON THE RECORD
E WILL DO A MORE FULL INSTRUCTION REVIEW ON THE
THE END OF THE CASE. SO IF YOU'D LIKE WE

~~RECEIVED.~~

MR. ADAIR, DID YOU GET A PACKET OF THE INSTRUCTIONS?

MR. ADAIR: I DID, YOUR HONOR.

THE COURT: AGAIN, WE'LL ASK THE WITNESS TO

~~MR. ADAMS: I DON'T~~

THE COURT

[illegible]

SECRET

EXHIBIT A

0358
7-19-05

SC 11643 Burton, Eric

9:30 The Court is in session with all parties present as previously noted. Attorney Adair requests that the court postpone jury selection until they are able to locate a subpoenaed witness, Melanie Clark.

Attorney Adair calls his investigator, **PETER ANGELO BARRANCO**, who is sworn and examined regarding his contact with Melanie Clark.

9:40 In Peter Angelo Barranco is excused. The people object to the motion to postpone jury selection.

9:40 In The Court **DENIES** the motion to postpone jury selection. The Court orders a warrant in the amount of \$20,000.00 for Melanie Jean Clark aka: White (dob: 7-28-66).

9:40 In Attorney Adair makes a request to have the defendant dressed in civilian clothing for the duration of the trial.

9:30 In Court is in recess.

10:00 In Court is again in session with all parties present as noted previously. Attorney Adair requests that the motions the defendant previously filed, without the knowledge of Attorney Adair be accepted. The motion is **DENIED**.

The defendant is arraigned on the second amended complaint and enters a plea of **NOT GUILTY**.

The people's motion to exclude evidence of the victim's character pursuant to EC1103 will be addressed prior to opening statements.

The people's motion to exclude out-of-court statements made by the defendant will also be addressed prior to opening statements.

Attorney Adair informs the Court of potential witnesses.

Attorney Adair makes a motion for dismissal due to lack of speedy trial. The Court **DENIES** the motion as there were time waivers previously made on the case.

Attorney Adair makes a Trombetta motion, indicating that the prime scene was not secured appropriately and that blood evidence may have been washed away. The motion is **DENIED**.

Attorney Adair makes a further Trombetta motion stating that the defendant's cell phone is missing. The motion is **DENIED**.

Attorney Adair renews his motion to suppress evidence found in the [REDACTED] backpack and vehicle.

[REDACTED] - color photo of defendant's car parked in his parking space, [REDACTED]

The motion to suppress is **DENIED**.

EL CAJON, CALIFORNIA; FRIDAY, 7/22/05; 1:34 P.M.

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT OUT OF THE PRESENCE OF THE JURY:)

THE COURT: LET'S GO ON THE RECORD BEFORE WE BRING IN THE JURY.

I HAVE ANOTHER DOCUMENT THAT MR. BURTON HAD SENT TO THE COURT. IT WAS ROUTED THROUGH DEPARTMENT 7, I BELIEVE, BUT IT APPEARS TO BE ANOTHER PRETRIAL OR TRIAL MOTION THAT HE HAD WANTED THE COURT TO CONSIDER. I'LL GIVE THAT TO MR. ADAIR. IF HE THINKS IT HASN'T BEEN ADDRESSED AND HE WISHES TO ADDRESS THAT, HE CAN DO SO AT THE RIGHT TIME.

MR. ADAIR: THANK YOU, YOUR HONOR.

THE COURT: I THINK AT THIS TIME WE'RE READY TO BRING THE JURY IN. IS THERE -- I DID WANT TO ASK BASED ON HOW THINGS ARE MOVING -- SINCE THEY RIGHT NOW ARE UNDER THE IMPRESSION THAT WE'RE GOING TO SUBMIT THIS AUGUST 2ND, DO YOU THINK I COULD TELL THEM PROBABLY BY THE END OF NEXT WEEK IS MORE LIKELY?

MR. ADAIR: WELL, IT MAY DEPEND ON HOW MANY POLICE OFFICERS YOU LET ME CALL.

THE COURT: NO MATTER HOW MANY, I DON'T THINK THEY CAN EACH INDIVIDUALLY TAKE TOO LONG.

MR. ADAIR: IT'S --

THE COURT: SO WE'RE PROBABLY ON TRACK TO SUBMIT AT LEAST BY THE END OF THE WEEK, I WOULD THINK.

MR. ADAIR: POSSIBLY, YOUR HONOR. POSSIBLY

0364

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO
EAST COUNTY DIVISION

DATE: 2-21-05 DEPT: 10 Reporter: Ja'nal Carter #12813

PRESENT HON. LAURA W. HALGREN
JUDGE

CLERK: N. Lyons

BAILEY: J. Mitchell

REPORTER'S ADDRESS: P.O. BOX 128
SAN DIEGO, CA 92112-4104

SC 28643 People of the State of California,
Plaintiff by Kristian Trocha
vs

Burton, Eric Defendant by Charles Adair

At 10 am This being the time set for further TRIAL BY JURY having been continued from 7-20-05.
The People are present by Deputy District Attorney Kristian Trocha. The defendant is personally
present, in custody, dressed in civilian clothing, with Private conflict Counsel Charles Adair. The
people's investigating officer Rich Gonsalves is also present.

The Court makes the following rulings:

* As the defense' request to introduce the victim's prior history or bad acts for the purpose of
impeachment - The Court will allow it if there was a conviction and if it shows domestic violence or
disreputability.

The Court does not find that the victim's failure to respond to the civil restraining order the defendant
filed is an adoptive admission.

9 am The prospective jurors are now present in the courtroom and TRIAL RESUMES. Cross -
examination of Salinathan Thomas resumes.

11 am The jurors are admonished and excused for the morning recess. Court is in recess.

* 11 am Court is again in session with all counsel as previously noted, the defendant, the investigating
officer. The Court provides Attorney Adair with a motion that the defendant had sent to the Court and
states that all motions need to be submitted through Attorney Adair.

12 am All jurors are now present in the courtroom. Cross-examination of Salinathan Thomas
resumes.

2 am Reported sidebar held for 2 minutes.

TRIAL MINUTES

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83

EL CAJON, CALIFORNIA; THURSDAY, 10/21/05; 8:46 A.M.

THE COURT: GOOD MORNING.

MR. TROCHA: GOOD MORNING, YOUR HONOR.

MR. ADAIR: GOOD MORNING.

THE COURT: PEOPLE VERSES ERIC BURTON,
SCE238643.

COUNSEL, IF YOU'LL STATE YOUR APPEARANCES.

MR. TROCHA: GOOD MORNING, YOUR HONOR.
KRISTIAN TROCHA FOR THE PEOPLE.

MR. ADAIR: CHARLES ADAIR APPEARING FOR
MR. BURTON, YOUR HONOR. HE IS PRESENT. WE'RE READY TO
PROCEED.

THE COURT: ALL RIGHT. THIS IS THE DAY SET
FOR SENTENCING. I HAVE READ AND CONSIDERED THE
PROBATION REPORT FILED ON SEPTEMBER 16TH. I ALSO HAVE
READ AND CONSIDERED THE MOTION FOR A NEW TRIAL, WHICH
WAS FAXED TO THE COURT AND RECEIVED YESTERDAY AND THEN
FILED TODAY.

I UNDERSTAND THAT THE DISTRICT ATTORNEY HAS
RECEIVED A COPY AND IS PREPARED TO RESPOND ORALLY, BUT
THERE IS NO REQUEST FOR CONTINUANCE, CORRECT?

MR. TROCHA: THAT'S CORRECT, YOUR HONOR.

~~THE COURT: AND I HAVE ALSO BEEN ADVISED THAT~~
~~THE DISTRICT ATTORNEY HAS RECEIVED A COPY OF THE MOTION, WHICH WAS FILED IN~~
~~REPLY TO THAT MOTION.~~
~~WOULD YOU LIKE TO ADDRESS THE COURT FIRST?~~
~~MR. TROCHA: YES, YOUR HONOR.~~

3 *Cont'd* MR. ADAIR: FINE. THANK YOU, YOUR HONOR.
4 *replied to*
5 *the court* YOUR HONOR, THE FIRST ISSUE, I BELIEVE, AS
6
7 RAISED IN OUR PAPERS ARE MR. BURTON'S FARETTA MOTION,

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12 HE HAD MAILED IT TO THE COURT AND IT HAD BEEN FILED
13 APPARENTLY ON OR ABOUT JULY 7TH OF THIS YEAR BEFORE
14 TRIAL STARTED. ~~AND I BELIEVE TRIAL STARTED ON JULY 15TH~~
15 ~~CONCERNING THE CASE.~~ AND IT'S OUR CONTENTION THAT THAT
16 NEEDED TO BE RULED ON.

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NOT MAKING ANY MOTIONS WHILE WE WERE IN COURT ON THE
 19TH OR PRIOR TO THAT. I WANT TO SAY I AM ASKING THE
 COURT TO DISMISS HIMSELF.
 I'M SURE THE COURT AS YOU WERE RE-READING
 OVER THIS CASE BEFORE I EVEN BECAME INVOLVED. DIDN'T
 HAVE ANY SUCH ISSUES COME UP MR. BURTON. I DON'T WANT
 TO AT THIS TIME WHICH WAS DISCOVERED BEFORE THE TRIAL. I
 DON'T BELIEVE THE COURT CAN RAISE IT NOW AFTER THE FACT, AFTER
 KIND OF LOOKING LIKE A MONDAY MORNING, CHARTERBACK AND
 SAYING, "I WOULD HAVE DONE IT IF I WANTED TO DO IT."
 I CHANGE MY MIND NOW. I DIDN'T HAVE THAT IN MY MIND
 BACK ON THE 19TH WHEN THE TRIAL STARTED.

AS TO THE NEWLY DISCOVERED EVIDENCE PORTION, I

I DON'T WANT TO SAY I WOULD HAVE DONE IT IF I WANTED TO DO IT.
 I DON'T BELIEVE THE COURT CAN RAISE IT NOW AFTER THE FACT, AFTER
 KIND OF LOOKING LIKE A MONDAY MORNING, CHARTERBACK AND
 SAYING, "I WOULD HAVE DONE IT IF I WANTED TO DO IT."
 I CHANGE MY MIND NOW. I DIDN'T HAVE THAT IN MY MIND
 BACK ON THE 19TH WHEN THE TRIAL STARTED.

THE HISTORY IN THIS CASE THAT THE DEFENDANT
 BOTH UNDER 1368 MOTIONS AS WELL AS OTHER PRIOR PRETRIAL
 ISSUES WITH THIS DEFENDANT, REFUSED TO BE SEEN BY A
 PSYCHIATRIST. HE EVEN REFUSED TO BE SEEN POST-TRIAL
 LAST MONTH BY A PSYCHIATRIST IN PREPARING THIS MOTION.

I DON'T WANT TO SAY I WOULD HAVE DONE IT IF I WANTED TO DO IT.
 I DON'T BELIEVE THE COURT CAN RAISE IT NOW AFTER THE FACT, AFTER
 KIND OF LOOKING LIKE A MONDAY MORNING, CHARTERBACK AND
 SAYING, "I WOULD HAVE DONE IT IF I WANTED TO DO IT."
 I CHANGE MY MIND NOW. I DIDN'T HAVE THAT IN MY MIND
 BACK ON THE 19TH WHEN THE TRIAL STARTED.

THE SITUATION REALLY WOULD GIVE RISE TO A

ACQUITTAL,

FOR ALL OF THOSE REASONS AND PARTICULARLY THE
REASONS THAT IT IS IN THE INTEREST OF JUSTICE, THIS IS
THE KIND OF THING THAT COULD AFFECT A JURY, MOST
PROBABLY WOULD AFFECT A JURY, WE'RE ASKING FOR A NEW
TRIAL.

THE COURT: OKAY. THANK YOU.

MR. TROCHA, WOULD YOU CARE TO RESPONSE?

MR. TROCHA: YES, YOUR HONOR.

FIRST, AS TO THE FARETTA ISSUE, I DON'T RECALL
MR. BURTON BEFORE TRIAL --

over - sentencing is a trial

1245

MENTAL EVALUATIONS PREJUDICES THE COLLATERAL ATTACK
 BASED UPON POST-TRIAL EVALUATIONS.
 IN ESSENCE, THAT COURT HAS A PROBLEM WITH THE
 DEFENDANT REFUSING TO SEE A PSYCHIATRIST -- KIND OF
 SANDBAGGING -- UNTIL POST-TRIAL HE SAYS, "MY MENTAL
 STATE WAS NEWLY DISCOVERED EVIDENCE. IT COULD HAVE
 INFLUENCED THE OUTCOME OF THE CASE. I DIDN'T LET THE
 PSYCHIATRIST SEE THIS, BUT AFTERWARDS I HAVE JUST NOW
 NEWLY DISCOVERED THIS." TECHNICALLY, THAT'S NOT NEWLY
 DISCOVERED EVIDENCE TO BEGIN WITH BECAUSE IT DID EXIST
 THROUGHOUT THE TRIAL. DEFENDANT HAD DUE DILIGENCE IN
 SIMPLY SEEING A PSYCHIATRIST THAT COULD HAVE FOUND THIS
 OUT. HE DIDN'T EXERCISE HIS RIGHT TO DO SO. HE CAN
 BRING IT UP IN A NEW TRIAL IN ORDER TO OVERTURN THE
 VERDICT AND HAVE A NEW TRIAL GRANTED.

1 THE COURT: THANK YOU.

1 MR. TROCHA: THANK YOU, YOUR HONOR.

1 THE COURT: BRIEF REPLY.

1 MR. TROCHA: MR. BURTON HAS A DOCUMENT,
 2 WHICH -- IT'S A COPY, I GUESS, OF THE DOCUMENT, WHICH HE
 2 HAD FILED APPARENTLY BACK IN JULY. I BELIEVE IT APPEARS
 3 TO BE MAILED TO THE COURT AND PART OF MANY ISSUES THAT
 3 HE RAISES IN THE DOCUMENT APPEARS TO BE A FARETTA
 4 MOTION.

1 IF I COULD SHOW THIS TO MR. TROCHA.

1 THE COURT: YOU CAN SHOW IT TO HIM, BUT THE
 1 FACT THAT HE HAS A COPY OF SOME DOCUMENT ISN'T EVIDENCE
 1 THAT IT WAS ACTUALLY FILED WITH THE COURT.

1 MR. TROCHA: THERE DOES APPEAR TO BE A FILE
2 STAMP ON THE ENVELOPE.

3 THE COURT: WHATEVER HAS BEEN FILED WITH THE
4 COURT WOULD BE IN THE COURT FILE.

5 MR. ADAIR: COULD I HAVE THIS FILED AS AN
6 EXHIBIT, YOUR HONOR?

7 THE COURT: THE PURPOSE OF IT BEING? IS IT
8 MR. BURTON'S REPRESENTATION THAT THIS IS THE DOCUMENT HE
9 FILED WITH THE COURT?

10 MR. ADAIR: YES, YOUR HONOR.

11 THE COURT: WELL, WHY DON'T YOU LET ME LOOK AT
12 IT. IT MAY BE THAT WE HAVE IT IN THE COURT FILE, IN
13 WHICH CASE WE DON'T NEED TO DO THAT.

14 (COUNSEL HANDS DOCUMENT TO THE COURT.)

15 THE COURT: ALL RIGHT. THAT DOCUMENT IS IN
16 THE COURT FILE AND THERE IS AN ENVELOPE PRECEDING THE
17 DOCUMENT WHERE THE ENVELOPE IS FILE-STAMPED JULY 7TH.
18 SO WE DON'T NEED TO HAVE ANOTHER COPY.

19 AND THAT, JUST FOR THE RECORD, IS A DOCUMENT
20 WHICH IS IN HANDWRITING IN PENCIL STATING AT THE

21 ~~REDACTED~~, NOTICE
22 OF MOTION, AND MOTION TO DISMISS BECAUSE DENIAL OF RIGHT
23 TO DUE PROCESS, SIXTH, ~~FOURTH~~, AND FIFTH AMENDMENT
24 VIOLATIONS," AND THEN IT GOES ON WHERE ANOTHER THREE OR
25 FOUR INCHES OF -- RAISING OTHER ISSUES. AND IN THE
26 MIDDLE OF THAT ON THE FRONT PAGE THERE IS A REFERENCE TO
27 THE WORD "FARETTA." SO I THINK THAT MAKES THE RECORD AS
28 TO WHAT WAS FILED..

29

1 MR. ADAIR: THANK YOU, YOUR HONOR.

2 THE COURT: ALL RIGHT. LET ME DEAL FIRST WITH
 3 THE ISSUE OF RELATING TO THE CLAIM OF FARETTA.

4 FIRST OF ALL, I AM NOT SURE THAT THAT WOULD
 5 REALLY APPROPRIATELY BE GROUNDS FOR A NEW TRIAL MOTION
 6 AS OPPOSED TO AN ISSUE FOR WHICH THERE MAY OR MAY NOT BE
 7 AN APPELLATE ISSUE TO RAISE. BUT IN ANY EVENT, EVEN IF
 8 IT WERE AN APPROPRIATE GROUND, I WOULD BE DENYING IT FOR
 9 THE FOLLOWING REASONS:

10 THE PAPERWORK WAS SENT BY MR. BURTON TO THE
 11 COURT ON EITHER JULY 7TH OR JULY 8TH. BOTH DATES APPEAR
 12 ON THE ENVELOPE. THE NEXT COURT HEARING THAT WE HAD
 13 AFTER THAT DATE WAS THE DAY OF TRIAL, AND IT WAS NOT
 14 CALLED TO THE COURT'S ATTENTION THAT THERE WAS ANY
 15 PENDING FARETTA ISSUE.

16 ~~MR. BURTON HAD NO OPPORTUNITY TO PRESENT HIS MOTION TO THE~~
 17 ~~COURT. AND ON SEVERAL OCCASIONS THROUGHOUT THE TRIAL,~~
 18 ~~WE WENT INTO RECESS TO HEAR MARSDEN MOTIONS. AND AT~~
 19 ANY TIME HE HAD WANTED THE COURT TO RULE ON THE FARETTA
 20 MOTION, HE CERTAINLY WOULD HAVE HAD THAT OPPORTUNITY.

21 I WILL NOTE THAT BACK IN MARCH -- MARCH 23RD
 22 OF '05, IF I'M RECALLING CORRECTLY -- OR MARCH 24TH

23 ~~ACTUALLY, WE HAD EXTENSIVE MARSDEN MOTIONS. ALSO,~~
 24 DEFENDANT AT THAT TIME HAD REQUESTED A FARETTA MOTION,

25 ~~BUT THEN TOLD THE COURT HE WANTED TO ADDRESS THE MARSDEN~~
 26 ~~MOTION. AND WE WENT INTO RECESS -- NOT~~

27 ~~MR. BURTON AND STAFF WERE PRESENT. THE RECORD OF THIS~~

1 ~~ISSUES, AND AT THE CONCLUSION, GOING THROUGH THOSE AND~~
 2 RULING THAT COUNSEL WAS ADEQUATELY REPRESENTING
 3 MR. BURTON. ~~HE DID NOT THEN RAISE A FARETTA MOTION, AND~~
 4 ~~IT WAS NOT MENTIONED FURTHER AT THAT TIME.~~

5 THE NEXT PROCEEDINGS WERE WHEN WE HAD THE
 6 COMPETENCY ISSUES RAISED, THE PROCEEDINGS WHICH WERE
 7 SUSPENDED. AND UPON HIS RETURN TO COURT IN JULY, HE DID
 8 NOT TO MY RECOLLECTION EVER AGAIN RAISED A FARETTA
 9 ISSUE.

10 ~~SO BECAUSE HE DID NOT CALL THAT TO MY~~
 11 ~~ATTENTION AND BECAUSE I FEEL THAT HE WAS CERTAINLY~~
 12 ~~CAPABLE OF DOING SO -- HE KNEW HOW TO DO SO, AND HE~~
 13 ~~CERTAINLY RAISED MANY, MANY ISSUES DURING THE COURSE OF~~
 14 THE TRIAL -- I DON'T FEEL THAT THAT WAS BROUGHT TO THE
 15 COURT IN SUFFICIENT FASHION FOR THE COURT TO RULE. AND,
 16 THEREFORE, THAT GROUND FOR A MOTION FOR A NEW TRIAL IS
 17 DENIED.

18 ~~WITH REGARD TO THE ISSUE RELATING TO NEWLY~~
 19 ~~DISCOVERED EVIDENCE. FIRST OF ALL, THE MAIN REASON THAT~~
 20 ~~WOULD BE DENIED IS IT WAS WITHIN MR. BURTON'S CONTROL TO~~
 21 ~~HAVE THAT EVIDENCE FLUSHED OUT FULLY BEFORE THE TRIAL.~~

22 ONE OF THE ISSUES RAISED IN THE MARDEN MOTION
 23 BACK IN MARCH HAD TO DO WITH HIS UNHAPPINESS OF
 24 MR. ADAIR TRYING TO HAVE A PSYCHOLOGICAL EVALUATION
 25 DONE. AND WE DISCUSSED AT LENGTH MR. BURTON'S REFUSAL
 26 TO HAVE THAT DONE, AND SO IT IS QUITE CLEAR TO ME THAT
 27 MR. ADAIR TOOK ALL STEPS POSSIBLE TO TRY AND HAVE THAT
 28 EVIDENCE AVAILABLE FOR THE COURT, BUT MR. BURTON CHOSE NOT

— — —

THE COURT: ALL RIGHT. WE ARE ON THE RECORD
VERSUS BURTON. COUNSEL AND DEFENDANT ARE
AS IS THE INVESTIGATING OFFICER.

AS I MENTIONED THE OTHER DAY, MR. BURTON, IF THERE ARE MOTIONS TO BE PRESENTED, THEY NEED TO COME THROUGH MR. ADAIR. SO I'LL GIVE THAT TO HIM. I DON'T KNOW IF THE CONTENT WAS ALREADY ADDRESSED WHEN WE RULED ON ISSUES THE OTHER DAY, BUT ANYTHING THAT NEEDS TO BE BROUGHT NEEDS TO BE THROUGH HIM.

[illegible]

~~HOWEVER THE BROADER QUESTION, HOW~~

Bump

1 **THE COURT:** FIRST OF ALL, I DID RECEIVE
 2 ANOTHER DOCUMENT, MR. BURTON, THAT YOU HAD SENT TO THE
 3 COURT. IT JUST MADE ITS WAY UP TO MY DEPARTMENT. I
 4 THINK IT OVERLAPS WITH ISSUES MR. ADAIR RAISED ON THE
 5 FIRST DAY OF TRIAL. AGAIN, I'M HANDING IT TO MR. ADAIR.
 6 SO IF THERE ARE ANY ADDITIONAL LEGAL ISSUES THAT HE
 7 THINKS ARE APPROPRIATE TO FILE, HE CAN DO SO.

8 ~~SECONDLY, YESTERDAY LAST EVENING I HAD~~
 9 ~~MENTIONED THAT I MIGHT CONSIDER A LIMITING INSTRUCTION~~
 10 ~~TO THE COURT WHEN ALL OF THIS EVIDENCE IS PRESENTED~~
 11 ~~REGARDING MR. THOMAS. IN REFLECTING ABOUT IT LAST NIGHT~~
 12 ~~AND THIS MORNING, I THOUGHT WHAT CONCEPT YOU~~
 13 ~~HAD SUGGESTED AN IN-LIMIT INSTRUCTION, AND I THINK IT~~
 14 ~~IS APPROPRIATE TO WAIT AT THE END OF THE TRIAL WHEN WE~~
 15 ~~KNOW ALL OF THE DIFFERENT LIMITING EVIDENCE, THEN I~~
 16 ~~WOULD DO ONE.~~

17 ~~AND IF EITHER OF YOU AT THE END OF THE TRIAL~~
 18 ~~THINK IT'S APPROPRIATE, YOU CAN SUGGESTION AND~~
 19 ~~I WILL CONSIDER THAT.~~

21 **MR. TROCHA:** THAT'S FINE.

22 ~~THE COURT: I THINK THERE'S JUST TOO MANY~~
 23 ~~DIFFERENT WAYS THE EVIDENCE IS GOING TO COME IN.~~
 24 ~~I THINK THAT'S IT. WE'RE GOING TO STOP AT~~
 25 ~~NOON, AND THEN WE'LL START AGAIN AT 1:00.~~

26 **MR. TROCHA:** I THINK ALSO FOR THE RECORD, THE
 27 ~~WAS OF EVIDENCE, PEOPLE'S 129 ACCIDENT REPORT OPEN.~~
 28 ~~WE HAD TO RESTATE IT.~~

MOE. W. Swinton #4112831-5003

143 Front St. 1/11/04

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San Diego California

92117-7932

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BY M. O'Brien, Deputy
EAST COUNTY DIVISION

JUL 08 2005

Clerk of the Superior Court

BY M. O'Brien
EAST COUNTY DIVISION

F I L E D
Clerk of the Superior Court

JUL 07 2005

Elko Bank of Superior Court

San Diego County

San Diego County

250 E. Main St.

El Cajon California 92020-3913



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ERIC WILTON BURTON #411283 / S.O.C.J
 IN PROPER / Pro Se
 1143 FRONT ST. 7A S.O.C.J.
 SAN DIEGO, CA 92112-2952
 (619) 615-2700 Info Number.

Superior Court of the State of California
 County of San Diego
 East County Division

People of the State of
 California,
 PLAINTIFF
 v.

Eric Wilton Burton,
 Defendant

Sept. 11

Case no. SCE238643 01

TIME: 900 AM J33901

DATE: 7-19-05

Notice of Motion and Motion
 To Dismiss Because Denial of
 Right to Due Process

6th, 4th, and 5th amendment

VIOLATIONS Notice of Motion

and motion to suppress

evidence pursuant to

15.22.5 Notice of Motion and

Motion to Dismiss Because Denial of

Right to Due Process

6th, 4th, and 5th amendment

VIOLATIONS Notice of Motion

and motion to suppress

evidence pursuant to

15.22.5 Notice of Motion and

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15.22.5 Notice of Motion and

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6th, 4th, and 5th amendment

VIOLATIONS Notice of Motion

and motion to suppress

evidence pursuant to

15.22.5 Notice of Motion and

Motion to Dismiss Because Denial of

Right to Due Process

6th, 4th, and 5th amendment

VIOLATIONS Notice of Motion

and motion to suppress

evidence pursuant to

Notes Given

To Bonnie Dumas

District Attorney for the County
 of San Diego and her designated
 Representative

Please take Notice that on the above
 date and time, or as soon thereafter
 as the matter may be heard in the
 above court, the defendant with the
 assistance of his appointed attorney
 Charles H. Adair will move the
 court to dismiss all charges against
 him and release defendant from custody.

This Motion is brought on the

grounds that Eric Wilton Burton's

Constitutional rights were violated:

E.C. Police Dept. Denied defendant his

right to Counsel, coerced statements

and admissions from defendant in

violation of Miranda warnings, 4th, 5th, 6th,

and 14th due process, used such coerced

statements against defendant and thus

(96)

1 MR. BURTON, IF I GRANT YOUR REQUEST -- AND LET
2 ME SAY PARENTHETICALLY YOU'RE, IN MY VIEW, VERY
3 WELL-SPOKEN. YOU'VE OBVIOUSLY DONE SOME READING, ~~AND PLEASE~~
4 ~~DON'T TAKE WHAT I'M ABOUT TO SAY AS A CRITICISM OF YOU, BUT~~
5 ~~IT'S OFTEN SAID THAT A LITTLE KNOWLEDGE CAN BE A DANGEROUS~~
6 ~~THING.~~ AND YOU'VE BEEN THROWING AROUND THE MAJORITY OF THE
7 AMENDMENTS IN THE BILL OF RIGHTS AND A FEW OTHERS TO BOOT.
8 ~~AND I'M NOT PASSING ON THE MERITS OF YOUR ARGUMENTS EXCEPT~~
9 ~~TO SAY THAT SOME OF YOUR ARGUMENTS DO NOT APPEAR LEGALLY TO~~
10 ~~HOLD ANY WATER,~~ BUT I'M NOT GOING TO BELABOR THOSE MATTERS
11 PRESENTLY OTHER THAN TO UNDERSCORE MY BELIEF, STRONGLY-HELD
12 BELIEF THAT ASSUMING THE COURT GRANTS YOU YOUR REQUEST FOR A
13 NEW COUNSEL, ~~THAT YOU WOULD BE WELL ADVISED TO COOPERATE~~
14 ~~WITH THAT ATTORNEY AND ALLOW THAT ATTORNEY TO BE CAPTAIN OF~~
15 ~~YOUR SHIP. AN ATTORNEY IS NOT TO SIMPLY AGEE AT YOUR DECK~~
16 ~~AND CALL OR PROCEED IN A MANNER THAT YOU DESIRE OR THAT YOU~~
17 ~~THINK APPROPRIATE.~~ IT'S THE ATTORNEYS JOB TO REPRESENT YOU
18 AND TO ADVOCATE YOUR POSITION AND PROTECT YOUR RIGHTS AND
19 INTERESTS, ~~BUT IT IS NOT AN ATTORNEY'S JOB TO SIMPLY SAY HOW~~
20 ~~HIGH WHEN, IN A MANNER OF SPEAKING, YOU TELL THE ATTORNEY TO~~
21 ~~JUMP.~~

22 I WANT YOU TO FURTHER UNDERSTAND, MR. BURTON,
23 RETURNING TO YOUR REQUEST FOR NEW COUNSEL, THAT IF THE COURT
24 GRANTS THIS REQUEST, THAT'S GOING TO NECESSITATE A FURTHER
25 CONTINUANCE OF THE TRIAL DATE SO AS TO ALLOW NEW COUNSEL TO
26 GET UP TO SPEED AND PROPERLY REPRESENT YOUR INTEREST. IT'S
27 GOING TO TAKE THIS CASE PROBABLY INTO THE FOREPART OF NEXT
28 YEAR.

BEST COPY OF
DEFENSE MOTION FOR
NEW TRIAL ON 10-21-05

never ruled on. Trial started on July 19th. Under the reasoning in Faretta, supra, inquiry should have been made Mr. Burton, and he should have been allowed to represent himself.

Because of this error, a new trial should be granted under P.C. 1181(5).

11

**THE TRIAL COURT SHOULD GRANT A MOTION FOR A NEW TRIAL
ON THE BASIS OF NEWLY DISCOVERED EVIDENCE**

~~Part C Section 1181 provides in part:~~

~~"When a verdict has been rendered or a finding made against the defendant, the court may, upon his application, grant a new trial, in the following cases only:~~

~~"8. When new evidence is discovered material to the defendant, and which he could not, with reasonable diligence, have discovered and produced at the trial. When a motion for a new trial is made upon the ground of newly discovered evidence, the defendant must produce at the hearing, in support thereof, the affidavits of the witnesses by whom such evidence is expected to be given, and if time is required by the defendant to procure such affidavits, the court may postpone the hearing of the motion for such length of time as, under all circumstances of the case, may seem reasonable."~~

The prerequisites to the granting of a motion for new trial on the basis of newly discovered evidence were established by the Supreme Court in People v Williams (1972) 57 Cal 2d 263, 270, 18 Cal Rptr 729, 368 P2d 353:

"To entitle a party to have a new trial on his ground, 'it must appear, -"1. That the evidence, and not merely its materiality be newly discovered; 2. That the evidence be not cumulative merely; 3. That it be such as to render a different result probable on retrial of the cause; 4. That the party could not with reasonable diligence have discovered and produced it at the trial; and 5. That these facts be shown by the best evidence of which the case admits."

Evidence is newly discovered if the defendant acts diligently in attempting to present the evidence, but is prevented from doing so. Thus, calling a co-defendant who invokes the privilege not to be called as a witness outside the presence of the jury, is sufficient diligence to make his testimony newly discovered after his Fifth Amendment privilege is no longer applicable [People v Shoals, (1992, 6th Dist) 8 Cal App 475, 10 Cal Rptr 2d 296].

2. 198

1 EL CAJON, CALIFORNIA; WEDNESDAY, 7/27/05; 10:57 A.M.

2 - - -

3 (THE FOLLOWING PROCEEDINGS HAVE BEEN ORDERED
4 SEALED BY THE COURT:)

5 **THE COURT:** ALL RIGHT. THE COURTROOM HAS BEEN
6 CLEARED.

7 MR. BURTON, WHAT IS THE BASIS FOR THIS MARSDEN
8 MOTION?

9 **THE DEFENDANT:** INEFFECTIVE ASSISTANCE OF
10 COUNSEL AND DEPRIVATION OF MY RIGHT OF AN EFFECTIVE
11 DEFENSE.

12 **THE COURT:** AND WHAT IS THE SPECIFIC GROUND?

13 **THE DEFENDANT:** THE SPECIFIC GROUND IS THAT I

14 ~~I HAVE BEEN REASONABLY BELIEVED TO BE A DANGEROUS~~
15 ~~PERSON WHO HAS CAUSED DAMAGE TO OVER 50 PEOPLE OF THE~~
16 ~~AREA AND I HAVE BEEN IN THE LAST SEVERAL TIMES AND~~
17 ~~BEFORE I HAVE BEEN RELEASED FROM THE~~
18 ~~TO APPROXIMATELY 100 OF MY DOCTORS, THE VA MEDICAL~~
19 ~~CENTER AT LA JOLLA, THE DOCTOR WHO PERFORMED TWO~~
20 ~~OPERATIONS ON MY EYES, DR. LEE, HE HAD THE CLINIC IN SAN~~
21 ~~ANTONIO, CALIFORNIA, AS WELL AS THE CURRENT PHYSICIAN~~
22 ~~SPECIALIST IN OCSD.~~

23 ~~THESE ARE ALSO RECORDED IN THE~~
24 ~~RECORDS OF THE VA MEDICAL CENTER IN AN EMERGENCY. I HAVE HAD~~

25 ~~THE OPERATION ON MY EYES AND ON MY EYES AND~~

26 ~~AND I HAVE BEEN CONVICTED OF A FELONY AND I KNOW THAT~~

27 ~~THEY KNOW I AM LEGALLY BLIND, DEAF, AND~~

28 ~~BEING CHARGED WITH A FELONY AND I HAVE A~~

1 ~~IN DEPTH PERCEPTION. I HAVE DIMINISHED VISUAL FIELD~~
 2 HAVE ~~INFLAMED~~ GLAUCOMA. AND BY NOT PRESENTING A DOCTOR
 3 ON MY BEHALF, IT DEVASTATES MY DEFENSE BECAUSE IT DEEMS
 4 MY DEFENSE INEFFECTIVE, ~~ON MY OWN DEFENSE~~
 5 ~~EFFECTIVELY CAN ACTUALLY DEFEND ME PROPERLY.~~

6 AND THAT, I BELIEVE, IS INEFFECTIVE ASSISTANCE
 7 OF COUNSEL AND IT DEPRIVATES ~~ME~~ ME IN MY RIGHT UNDER
 8 THE SIXTH AMENDMENT OF THE CONSTITUTION OF THE UNITED
 9 STATES AS GUARANTEED TO HAVE A RIGHT TO AN EFFECTIVE
 10 COUNSEL. ~~ON MY OWN DEFENSE~~

12 THANK YOU.

13 THE COURT: ALL RIGHT. ~~THE PRELIMINARY~~

14 ~~QUESTIONS TO THE JURY. IT'S BEEN DECIDED~~

15 ~~THE DEFENDANT'S REQUEST FOR A JURY TRIAL~~

16 MR. ADAIR, WOULD YOU -- IS THERE ANYTHING YOU
 17 WISH TO RESPOND TO WITH REGARD TO THE DECISION ON
 18 WHETHER TO PRESENT ANY EXPERTS RELATING TO THE EYE
 19 CONDITION?

20 MR. ADAIR: THE -- ORIGINALLY WHEN I GOT THE
 21 CASE, I ASKED MR. THOMAS TO SIGN A NUMBER --

22 ~~THE DEFENDANT'S REQUEST FOR A JURY TRIAL~~

23 MR. ADAIR: ORIGINALLY WHEN I GOT THE CASE, I

24 ~~ASKED MR. BURTON TO SIGN A NUMBER OF MEDICAL RELEASES~~

25 ~~AND AT THAT TIME HE REFUSED TO DO THAT. AND IT WAS ONLY~~

26 ABOUT -- AND I'M GUESSING AT THIS -- IT WAS PROBABLY
 27 AROUND -- IF I COULD --

28 THE COURT: YOU COULD CHECK WITH YOUR

106

1 INVESTIGATOR IF YOU NEED TO.

2 MR. ADAIR: HE DID AGREED TO SIGN AT ONE
3 POINT. I'M JUST TRYING TO FIGURE OUT THE DATE.

4 THE COURT: MR. BURTON, YOU'LL HAVE A CHANCE
5 TO REPLY AFTER MR. ADAIR RESPONDS.

6 MR. ADAIR: [REDACTED]
7 SIGNED A MEDICAL RECORDS RELEASE.

8 COULD I HAVE MY INVESTIGATOR RESPOND?

9 THE COURT: CERTAINLY.

10 SIR, IF YOU'LL JUST STEP FORWARD SO THE
11 REPORTER CAN CLEARLY HEAR YOU, AND DESCRIBE ANY
12 INVOLVEMENT YOU HAD RELATING TO THE EYE ISSUE.

13 MR. BARRANCA: MR. ADAIR ISSUED SUBPOENAS
14 REGARDING HIS EYE DIAGNOSIS AND TREATMENT. AND THE
15 SUBPOENAS WERE SERVED ON THE VA HOSPITAL; ON A LOCAL
16 PHYSICIAN EYE SURGEON HERE IN EL CAJON FOR DR. FRANKLIN
17 CRYSTAL FOR THE RECORDS TO BE PRODUCED. ALSO, WE SENT
18 A RELEASE AND SUBPOENA TO THE DEPARTMENT OF SOCIAL
19 SERVICES BECAUSE THE TREATMENT WAS BEING PROVIDED BY THE
20 DEPARTMENT OF SOCIAL SERVICES. AND, IN ADDITION, WE
21 SUBPOENAED DR. FRANKLIN CRYSTAL PERSONALLY TO APPEAR
22 HERE AS A WITNESS SO THAT HE MAY REVIEW THOSE RECORDS IN
23 THE COURT.

24 MR. ADAIR: AND I SHOULD INDICATE THAT THE
25 RECORDS FROM DR. CRYSTAL CONSISTING OF ABOUT TWO PAGES
26 OF EYE EXAMINATIONS, ONE THAT WAS DONE -- IF I COULD
27 HAVE A MOMENT.

28 THE COURT: SURE.

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1 MR. ADAIR: THEY WERE PRODUCED TO MY OFFICE ON

2 ~~WARRANT FROM THE COURT AND THEY REFUSED IT TO EXAMINE ME ON~~ --

3 PRODUCED PURSUANT THE SUBPOENA. AND THEY CAME IN ABOUT
4 A MONTH AFTER THEY WERE -- THE DATE THEY WERE SUBPOENAED
5 FOR. BUT THE ONE EXAMPLE WAS ON APPARENTLY 2001 --

6 ~~THEY WERE PRODUCED TO MY OFFICE ON A WARRANT FROM THE COURT~~
7 IF I COULD ASK MR. BARRANCA TO EXPLAIN WHAT
8 THE DIFFICULTIES WERE IN GETTING DR. CRYSTAL TO COME TO
9 COURT.

10 THE COURT: ALL RIGHT.

11 MR. BARRANCA: WHEN I CONTACTED THE DOCTOR'S
12 OFFICE INITIALLY, WE ISSUED A SUBPOENA AND THEY TO MY
13 KNOWLEDGE FAILED TO RESPOND.

14 I THEN CONTACTED THEM A SECOND TIME, ISSUED A
15 NEW SUBPOENA FOR A DIFFERENT COURT DATE. I SPOKE TO THE
16 DOCTOR'S ASSISTANT; HER NAME IS ROBIN. I WAS INFORMED
17 THAT THE DOCTOR WOULD NOT BE ABLE TO SPEAK WITH ME
18 REGARDING ANY OF MR. BURTON'S TREATMENTS BECAUSE

19 ~~MR. BURTON WAS UNDER THE CARE OF A NURSING HOME PROVIDED CARE~~

20 ~~THROUGH THE DEPARTMENT OF SOCIAL SERVICES AND I WOULD~~

21 ~~NEED AUTHORIZATION FROM THEM PRIOR TO THEM SPEAKING WITH~~

22 ~~ME OR ANYONE ABOUT MR. BURTON'S CONDITION.~~

23 THAT'S WHEN I WENT AND OBTAINED A SEPARATE
24 RELEASE SPECIFYING THAT DR. CRYSTAL IS ALLOWED TO SPEAK
25 WITH DEFENSE REGARDING MR. BURTON'S CONDITION. I WENT
26 BACK TO THE DOCTOR'S OFFICE, REISSUED THE SUBPOENA AND
27 THE RELEASE AND THE PERSONAL SUBPOENA FOR THE DOCTOR TO
28 APPEAR. ~~AND I WAS TOLD BY THE ASSISTANT THAT HE WOULD~~

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filed to subpoena Dr as witness

1038

1 ~~NOT APPEAR. HE STILL WOULD NOT DISCUSS ANYTHING~~
 2 ~~REGARDING MR. BURTON, AND I INFORMED THEM THAT I HAD~~
 3 ~~SPOKE WITH THE DEPARTMENT OF SOCIAL SERVICES AND I WAS~~
 4 ~~TOLD THEY HAD NO CONTROL OVER THE DOCTOR'S STATEMENT TO~~
 5 ~~ME ONCE MR. BURTON HAD SIGNED THE RELEASE~~
 6 ~~I THEN ASKED THE DOCTOR IF HE WOULD BE WILLING~~
 7 ~~TO COME TO COURT AND TESTIFY AS AN EXPERT WITNESS AND~~
 8 ~~SAID HE WOULD NOT AND I ASKED HIM IF HE WOULD BE WILLING~~
 9 ~~TO COME TO COURT AND TESTIFY AS AN EXPERT WITNESS AND~~
 10 ~~SAID HE WOULD NOT AND I ASKED HIM IF HE WOULD BE WILLING~~
 11 ~~TO COME TO COURT AND TESTIFY AS AN EXPERT WITNESS AND~~
 12 EXPERT WITNESS.

13 THE COURT: ALL RIGHT.

14 MR. ADAIR: AND IF I COULD PROCEED WITH THIS
 15 WHAT ADDITIONAL ATTEMPTS DID YOU MAKE?
 16 THE COURT: YOU MAY.

17 MR. BARRANCA: AFTER LEARNING THAT DR. CRYSTAL
 18 WAS ADAMANT ABOUT NOT APPEARING, I HAD KNOWLEDGE OF A
 19 PRIOR CASE I WORKED ON WHERE WE DID HAVE AN EYE DOCTOR
 20 TESTIFY. HE WAS VERY EFFECTIVE ON THE STAND. I
 21 CONTACTED HIS OFFICE AND WAS SPEAKING WITH HIM AS OF
 22 MONDAY AND TUESDAY OF THIS WEEK. LAST EVENING I SPOKE
 23 WITH HIM. HE WAS WILLING TO APPEAR AS AN EXPERT WITNESS
 24 IN ORDER TO GET THE RECORDS INTO THE -- GET THE MEDICAL
 25 RECORDS INTO THE COURT RECORD. ~~THE COURT: YOU MAY.~~
 26 ~~THE COURT: YOU MAY.~~
 27 ~~THE COURT: YOU MAY.~~
 28 ~~THE COURT: YOU MAY.~~

103

1 ~~TESTIFYING~~ SO HE RELUCTANTLY PULLED OUT AT THE LAST
2 MINUTE LAST NIGHT AND SAID HE COULDN'T DO IT.

3 HE HAD INFORMED ME THAT HE CONTACTED SEVERAL
4 OF HIS COLLEAGUES INQUIRING WITH THEM AS TO WHETHER THEY
5 WOULD BE WILLING TO TESTIFY AND NOBODY WAS -- ~~THEY~~

6 ~~WEREN'T CHAMPING AT THE BIT, AS YOU CAN SAY, TO COME IN~~

7 ~~THEY~~

8 ~~MR. ADAIR: AND THERE WAS ONE ADDITIONAL~~

9 ~~DOCTOR THAT HE CONTACTED.~~

10 MR. BARRANCA: I WENT THROUGH -- THERE'S A
11 FORENSIC EXPERT ASSOCIATION. I CONTACTED A DR. ~~THEY~~
12 UP IN CARLSBAD. HE'S AN EXPERT ON SEVERAL ISSUES
13 INVOLVING EYE COMPLICATIONS ABOUT EYE PROCEDURES. I
14 SPOKE WITH HIM YESTERDAY AND OFFERED HIM -- OR DISCUSSED
15 WITH HIM HIS FEES AND WHAT HE WOULD NEED IN ORDER TO
16 APPEAR. AND HIS FEES EXCEEDED WHAT THE COUNTY WOULD
17 PROVIDE BY LEAPS AND BOUNDS. AND BASICALLY HE PRESENTED
18 HIMSELF OUTSIDE OF OUR REACH.

19 MR. ADAIR: HE REQUIRED A \$5,000 CONSULTATION
20 FEE -- A RETAINER BEFORE HE WOULD EVEN TAKE THE CASE.

21 MR. BARRANCA: HE ALSO REQUESTED \$800 AN HOUR
22 TO TESTIFY.

23 MR. ADAIR: AND THE COUNTY, I BELIEVE, PAYS
24 \$350 FOR HALF A DAY AND \$750 OR SOMETHING FOR A WHOLE
25 DAY.

26 ALSO, I SHOULD INDICATE THAT I DON'T THINK THE
27 ~~BEFORE~~ ADMINISTRATION EVER RESPONDED TO ANY OF THE
28 SUBPOENAS. ~~AND I DID RECEIVE SOMETHING FROM THE~~

1 ~~DEPARTMENT OF SOCIAL SERVICES, YESTERDAY, A LETTER~~

2 ~~INDICATING THAT THEY HAD REFERRED THAT THEY HAD~~

3 ~~NOTHING THAT THEY RECOMMENDED THAT WE GO BACK TO~~

4 ~~MR. BARRANCA, HEALTH AND HUMAN SERVICES.~~

5 MR. ADAIR: -- ANOTHER AGENCY.

6 THE COURT: OKAY. SO AT THAT POINT THEN YOU
7 DECIDED THAT --

8 MR. ADAIR: WELL, ~~WAS THE OTHER COMING IN.~~

9 ~~AND WE FIGURED THAT IF WE COULDN'T GET AN EXPERT, WE'D~~
10 HAVE TO DO IT THROUGH LAY TESTIMONY.

11 THE COURT: ALL RIGHT. THANK YOU.

12 MR. BURTON, ANY REPLY TO THAT?

13 THE DEFENDANT: YES. ~~BY DANIEL STODOLINSKY~~

14 ~~SAN DIEGO COURT CLERK'S OFFICE WERE THE DEFENDANT'S~~

15 ~~MR. CRYSTAL WITH THE COURT ORDER TO RELEASE~~

16 ~~THE FORMS AS I WAS GOING TO SIGN THEM TO SUPPORT~~

17 ~~THESE WITH MY SIGNATURE, SO THE COURT ORDER WAS A~~

18 ~~COURT ORDER THAT WAS SIGNED BY THE COURT AND WOULD GO~~

19 ~~TO THE COURT CLERK'S OFFICE TO BE RECORDED IN THE~~

20 ~~SAN DIEGO COURT CLERK'S OFFICE.~~

21 ~~NOT IN MY HANDS IS MORE THAN A FEW MONTHS~~

22 ~~WHICH 10 DAYS SHOULD BE~~

23 ~~BEING TIMELY ENOUGH.~~ THIS GENTLEMAN HAS HAD THIS CASE
24 FOR OVER SIX MONTHS AND THIS DELAY IS UNREASONABLE AND
25 IT DENIES ME OF MY DUE PROCESS RIGHTS.

26 THERE ARE FIVE OTHER DOCTORS THAT I HAD
27 ALREADY SIGNED RELEASES TO. HE'S REFERRING TO DOCTORS
28 AND OTHER PEOPLE THAT AREN'T MY DOCTORS, THAT AREN'T

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1 FAMILIAR WITH MY CONDITION.

2 I HAD MADE NUMEROUS COMPLAINTS THAT COUNSEL
 3 WAS NOT ACCEPTING MY PHONE CALLS, WAS NOT COMMUNICATING
 4 WITH ME. ~~HAD SHE CALLED AND COMMUNICATED TO ME THE NEXT DAY~~

5 ~~THE COURT: WELL, IT SOUNDS LIKE YOU WERE NOT~~
 6 ~~IN MY DEFENSE. ~~AS FAR AS PROVIDING THE COURT WITH~~~~
 7 ~~HOWEVER, YOU WERE NOT PROVIDING THE COURT WITH~~
 8 ~~THE COURT: WELL, IT SOUNDS LIKE YOU WERE NOT~~

13 THE COURT: ALL RIGHT. WELL, ~~IT SOUNDS LIKE~~

14 ~~THE COURT: WELL, IT SOUNDS LIKE YOU WERE NOT~~

15 THE DEFENDANT: WELL --

16 THE COURT: -- NO. IT'S MY TURN.

17 THE DEFENDANT: OKAY.

18 THE COURT: -- TO ME, ~~IT SOUNDS LIKE~~

19 ~~THOUGH RECORDS, IT SOUNDS LIKE THAT HE HAS MADE~~

20 ~~REASONABLE PROFESSIONAL EFFORTS TO OBTAIN RECORDS.~~

21 THERE HAVE BEEN DIFFICULTIES. THERE ARE DIFFICULTIES

22 THAT CAN OCCUR IN MANY SITUATIONS PARTICULARLY WITH

23 GOVERNMENT -- FEDERAL GOVERNMENTAL AGENCIES INCLUDING

24 ~~THE WAY, WHO THROUGH MY OWN EXPERIENCE, I KNOW CAN BE~~

25 ~~WOULD BE DIFFICULT TO OBTAIN RECORDS FROM.~~

26 ~~SO IT SOUNDS LIKE COUNSEL EXPLORED VARIOUS~~

27 AVENUES. HIS PROFESSIONAL DISCRETION CONCLUDED THAT THE

28 EVIDENCE COULD BE SUFFICIENTLY PRESENTED THROUGH THE

called the Process

(106)

*Perjury - court said
 defendant's mother would only be allowed
 to testify on mental state - specifically
 alleged victim he beat or choked her*

1 DEFENDANT'S MOTHER.

2 IT HAS BEEN NOW PRESENTED TO THE JURY THAT
3 THERE ARE EYE PROBLEMS AND SHE HAS EXPLAINED HER
4 OBSERVATIONS. SO I DON'T SEE THAT -- I FEEL THAT YOU
5 HAVE BEEN PROPERLY REPRESENTED AND DO NOT FIND A BASIS
6 TO RELIEVE COUNSEL. SO THE MOTION IS DENIED, BUT YOU
7 HAVE MADE A RECORD AS TO YOUR CONCERN.

8 ~~AT THIS POINT I BELIEVE THAT YOU WANTED TO BE~~
9 ~~EXCUSED FOR THE INSTRUCTIONAL REVIEWS. SO WE WILL~~
10 ~~EXCUSE YOU. WE WILL ONLY DISCUSS INSTRUCTIONS DURING~~
11 ~~OUR PROCEEDINGS AND WHEN WE WILL RESUME WITH EVERYTHING~~
12 ~~ELSE AFTER LUNCH.~~

13 AND YOU CAN LET MR. TROCHA KNOW THAT HE CAN
14 COME BACK.

15 THE TRANSCRIPT ON THE MARSDEN SHOULD BE
16 SEALED.

17 **THE DEFENDANT:** THANK YOU.

18 **THE COURT:** YOU'RE WELCOME, MR. BURTON.

19 (CONCLUSION OF SEALED PROCEEDINGS. UNSEALED
20 PROCEEDINGS CONTINUE ON PAGE 1043; ~~RECEIVED~~

21 ~~OVER~~

22

23

24

25

26

27

28

~~Motion Continued~~ Argument Continued. 5240139

U.S. Cal 1975 Sixth amendment does not provide merely that defense shall be made for accused but grants to accused personally the right to make a defense; right to self representation to make one's own defense personally is necessarily implied by structure of the amendment U.S.C.A. Const. Amend. 6, 28

U.S.C.A. § 1654 Fed Rules Crim. Proc. rule 41, 18 U.S.C. 975, 5. Ct. 2525, 477 U.S. 906, 45 L.Ed.2d 562

U.S. Cal 1975 Language and spirit of 6th amend, contemplate that Counsel like other defense tools guaranteed by it, shall be an aid to willing defendant, and not an organ of state interposed between on unwilling defendant and his right to defend himself personally. U.S.C.A. Const. amend 6, 28 U.S.C. § 1654, Fed Rule Crim. Proc. rule 41, 18 U.S.C.A.

C.A. (Cal) 2001 Under California law, elements of cause of action for negligent misrepresentation include (1) misrepresentation of past or existing material fact (2) without reasonable ground for believing it to be true, and (3) with intent of inducing another's reliance on that misrepresentation (4) ignorance of the truth and justifiable reliance on that misrepresentation by party to whom it was directed, and (5) resulting damage

Glenn R. Jackson Inc. v. Roe, 273 F.3d 1192

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO
EAST COUNTY DIVISION

0361

DATE: 7-20-05

DEPT: 10

Reporter: Ja'nal Carter #12813

PRESENT HON. LAURA W. HALGREN
JUDGE

CLERK: N. Lyons

REPORTER'S ADDRESS: P.O. BOX 128
SAN DIEGO, CA 92112-4104

BAILIFF: J. Mitchell

SCE238643

People of the State of California,
Plaintiff

by Kristian Trocha

vs

Burton, Eric

Defendant by Charles Adair

At 9:00 am This being the time set for further **TRIAL BY JURY** having been continued from 7-19-05. The People are present by Deputy District Attorney Kristian Trocha. The defendant is personally present, in custody, dressed in civilian clothing, with Private conflict Counsel Charles Adair.

9:02 am All prospective jurors are present in the courtroom and voir dire resumes.

9:10 am Prospective juror #5207036 requests to speak to the court in private (reported 2 minutes).

9:12 am Voir dire resumes.

9:46 am Reported sidebar held for 2 minutes.

9:48 am Voir dire resumes.

9:53 am Reported sidebar held for 5 minutes.

9:58 am Voir dire resumes.

10:30 am **TWELVE JURORS ARE SWORN TO TRY THE CAUSE.**

10:31 am The jurors are admonished and excused for the morning recess. Out of the presence of the jurors, Court and counsel discuss the selection process for the alternate jurors.

10:35 am Court is in recess.

TRIAL MINUTES

1

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1 **THE COURT:** ALL RIGHT. GREAT.

2 IN THE MEANTIME, WE'LL ADDRESS OTHER ISSUES.

3 THE NEXT POINT IS, YOU RAISED THE FACT THAT
4 MR. BURTON HAD FILED SOME DOCUMENTS WITH THE COURT; THEY
5 WERE WITH MY AUTHORIZATION, RETURNED BECAUSE HE IS
6 REPRESENTED BY COUNSEL.

7 AND SO, MR. BURTON, YOU NEED TO UNDERSTAND
8 THAT THE WAY MOTIONS ARE BROUGHT TO THE COURT IS IF YOUR
9 ATTORNEY FEELS THERE IS A LEGAL BASIS FOR BRINGING A
10 MOTION, HE WILL PRESENT THAT. WE DON'T OPERATE WITH
11 ESSENTIALLY DOUBLE TEAMING. WE DON'T HAVE BOTH THE
12 DEFENDANT AND THE ATTORNEY SEPARATELY BRINGING MOTIONS,
13 BUT INSTEAD THROUGH YOUR COUNSEL MOTIONS ARE BROUGHT.

14 SO THE MOTIONS THAT MR. ADAIR, THROUGH HIS
15 LEGAL EXPERIENCE AND TRAINING, HE DEEMS APPROPRIATE TO
16 RAISE, I WILL CONSIDER. BUT I WILL NOT CONSIDER
17 SEPARATE MOTIONS FILED BY YOU. JUST SO YOU UNDERSTAND
18 OUR PROCEDURE.

19 WITH REGARD TO THE ARRAIGNMENT, I BELIEVE THE
20 SECOND AMENDED INFORMATION, WHICH WAS FILED ON JUNE 16TH
21 AT THE LAST HEARING, MR. ADAIR WAS PRESENT AT BOTH, AND
22 HAD NOTICE OF THAT, BUT MR. BURTON WAS NOT. SO I
23 BELIEVE HE NEEDS TO BE ARRAIGNED ON THE SECOND AMENDED
24 INFORMATION. SO WHY DON'T WE PROCEED WITH THAT AT THIS
25 TIME.

26 **MR. ADAIR:** DOES THE COURT HAVE A COPY OF
27 THAT?

28 **THE COURT:** I DO. I HAVE MULTIPLE COPIES.

33
110

1 THE COURT GRANT HIS REQUEST AND APPOINT A NEW COUNSEL.

2 THE COURT: THIS IS A CATEGORY 5 CASE THROUGH
3 THE PRIVATE CONFLICTS COUNSEL; IS THAT CORRECT?

4 MR. PLUMMER: THAT'S CORRECT.

5 THE COURT: AND YOU'RE ON THE P.C.C. LIST FOR
6 OBVIOUSLY CATEGORY 5. WHAT OTHER CATEGORIES?

7 MR. PLUMMER: I ACCEPT CASES IN CATEGORY 3, 4, 5
8 AND 6.

9 THE COURT: ALL RIGHT. SO YOU'RE ALSO ON THE
10 APPROVED LIST FOR CATEGORY 6, WHICH IS TO SAY, CAPITAL
11 CASES; CORRECT?

12 MR. PLUMMER: YES. I CURRENTLY HAVE A CAPITAL
13 CASE.

14 THE COURT: MR. BURTON, IS THERE ANYTHING
15 FURTHER YOU WISH TO SAY?

16 THE DEFENDANT: YES, SIR, YOUR HONOR, [REDACTED]
17 [REDACTED], THAT THERE ALSO WAS INFRINGEMENT UPON MY 14TH
18 AMENDMENT RIGHTS TO DUE PROCESS. AND ALSO MY DAUGHTER WHO

19 [REDACTED]
20 [REDACTED]
21 ORDERS, AND SHE DID NOT RECEIVE EQUAL PROTECTION UNDER THE
22 LAW. AND I FEEL I DIDN'T EITHER BECAUSE WHEN IT CAME UP
23 CONCERNING THE RESTRAINING ORDER -- ONCE RESTRAINING
24 ORDERS -- FROM THE INFORMATION I GATHERED, WHETHER THEY HAVE
25 BEEN SERVED OR NOT, THEY'RE SUPPOSED TO BE MAINTAINED BY LAW
26 ENFORCEMENT OFFICERS. [REDACTED]
[REDACTED]
[REDACTED]

1 EL CAJON, CALIFORNIA; MONDAY, 7/25/05; 9:18 A.M.

2 - - -
3 (THE FOLLOWING PROCEEDINGS HAVE BEEN ORDERED
4 SEALED BY THE COURT:)

5 THE COURT: MR. BURTON, WHAT IS -- FIRST OF
6 ALL, I WOULD LIKE YOU TO TELL ME WHAT CONCERNS YOU HAVE

7 ~~ABOUT YOUR ATTORNEY. THE COURT: I HAVE SOME QUESTIONS.~~

8 THE DEFENDANT: MAY I URGE THE COURT TO HAVE
9 MY ATTORNEY SWORN?

10 THE COURT: WHY?

11 THE DEFENDANT: BECAUSE HE NEEDS TO TESTIFY.

12 THE COURT: YOU NEED TO TELL --

13 ~~THE DEFENDANT: I HAVE SOME QUESTIONS.~~

14 ~~THE COURT: THAT'S NOT THE WAY IT WORKS.~~

15 ~~MRS. BURTON:~~

16 THE DEFENDANT: THE JUDGE MAY WANT TO ASK
17 HIM --

18 THE COURT: I'LL DECIDE IF I NEED TO DO THAT.

19 ~~YOU'VE GOT TO TELL ME THE REASONS WHY YOU WANT TO SIGN OFF ON THE TRO. I'LL DECIDE IF I NEED TO DO THAT.~~

20 ~~IF YOU WANT TO SIGN OFF ON THE TRO, YOU'VE GOT TO TELL ME THE REASONS WHY YOU WANT TO SIGN OFF ON THE TRO.~~

21 ~~TO RAISE A MARS DENIAL MOTION. WHAT ARE THE REASONS?~~

22 THE DEFENDANT: FOR ONE THING, YOUR HONOR, I
23 HAVE JUDICIAL PREJUDICE. I HAVE JUDICIAL CONFLICT OF
24 INTEREST AS YOUR HONOR WAS THE ONE WHO WAS MY BEST
25 WITNESS IN THIS MATTER. AND I FEEL I'VE BEEN DENIED OF
26 MY RIGHT TO A FAIR AND IMPARTIAL TRIAL BECAUSE YOU WERE
27 ~~THE ONE WHO SIGNED OFF ON THE TRO.~~

28 WHO MADE ME AWARE THAT THOMAS HAD STRUCK ANGELA SANDERS

1 IN THE HEAD WITH THE GLASS. AND YOU ARE THE ONE THAT
2 KNOWS THAT ANGELA SANDERS PERJURED [REDACTED] HERSELF,
3 BECAUSE IN YOUR COURT AT THE EX PARTE HEARING WHERE YOU
4 RESIDED AT. I HAD MY PAPERWORK FILLED OUT AS A
5 PETITIONER, BUT YOU HAD MADE US SWITCH SEATS. YOU SAID
6 THAT THE ACTION BEGAN IN THE FAMILY COURT; INITIATED
7 THROUGH CHILD SUPPORT DIVISION BY MS. SANDERS, AND YOU
8 MADE ME THE RESPONDENT. AND, THEREFORE, YOU HAD
9 KNOWLEDGE OF EVERYTHING. MY FEARS OF THOMAS WAS
10 PRESENT. IF I CAN REFER YOU TO YOUR OWN TRANSCRIPT,
11 YOU'LL SEE THAT HE WAS STALKING ME THEN.

12 **THE COURT:** AGAIN, LET ME STOP YOU RIGHT
13 THERE. SO IN WHAT WAY IS THAT A REASON FOR DISCHARGING
14 MR. ADAIR?

15 **THE DEFENDANT:** I WANT A MOTION FOR A
16 MISTRIAL. I HAVE A CONFLICT OF INTEREST WITH COUNSEL
17 BECAUSE I MADE HIM AWARE OF THIS. AND I WANTED, [REDACTED]
18 [REDACTED] TO HAVE HIM SWORN. HE'S AWARE OF THIS CONFLICT.

19 **THE COURT:** OKAY. ARE THERE ANY OTHER
20 GROUNDS?

21 **THE DEFENDANT:** YES.

22 **THE COURT:** WHAT OTHER GROUNDS?

23 **THE DEFENDANT:** WHEN I MADE MY MOTION TO GO
24 PRO PER; I FELT YOU WERE PREJUDICE IN DENYING THAT AND
25 ALL MY OTHER MOTIONS BECAUSE, [REDACTED], THAT DENIED
26 ME -- IT DEPRIVED ME OF MY 14TH AMENDMENT RIGHT FOR DUE
27 PROCESS. AND I'D LIKE A DISMISSAL BASED ON A VIOLATION
28 OF MY 6TH AMENDMENT RIGHT AND MY 14TH AMENDMENT RIGHT,

113

1 BECAUSE YOU DENIED ME MY RIGHT TO GO PRO PER AND YOU
2 KNEW THAT I WAS COMPETENT, ~~_____~~

4 THE COURT: AND WHAT IS THE -- HOW DOES THAT
5 RELATE TO YOUR --

6 THE DEFENDANT: COUNSEL WAS AWARE OF THIS AND
7 HE DID NOT INFORM THE COURT. THIS IS NEGLIGENCE IN MY
8 PROSECUTION ~~(SIC)~~. HE DID NOT INFORM THE COURT OF THIS
9 MATTER. AND THAT IS THE INEFFECTIVE ASSISTANCE OF
10 COUNSEL IN VIOLATION OF MY 6TH AND 14TH AMENDMENT RIGHTS
11 TO DUE PROCESS. I'D LIKE A DISMISSAL ON THAT.

12 COUNSEL IS AWARE THAT PROSECUTION HAS NOT
13 PROVIDED ME WITH ALL DISCOVERY AS MR. PLUMMER HAD
14 MOTIONED MS. MARIA HANNAH WITH MOTIONS ON ~~(SIC)~~ BRADY
15 ~~_____~~, FOR ALL DISCOVERY.
16 PROSECUTION DID NOT RESPOND ~~_____~~
17 THEREFORE, DENIED ME MY DUE PROCESS, BECAUSE I HAD THE
18 RIGHT TO BE ABLE TO KNOW THE EVIDENCE AGAINST ME.

~~_____~~
20 ~~_____~~ TO HAVING TRAINING ~~_____~~, I WOULD
21 OBJECT TO ANYTHING PROSECUTION WOULD SAY AS FAR AS THEIR

~~_____~~
~~_____~~ BEING THAT THEY DID NOT RESPOND WITHIN THE SAME FRAME OF
~~_____~~

25 THE COURT: OKAY. LET ME STOP YOU THERE.
26 SO DISCOVERY ISSUE IS ANOTHER REASON?

27 THE DEFENDANT: DISCOVERY ISSUES AND --

28 THE COURT: ARE THERE ANY OTHER GROUNDS IN

THE DEFENDANT: ~~XX~~

23 I'VE BEEN FALSELY ARRESTED, PROLONGED
24 DETAINMENT, AND FALSE IMPRISONED. MY WHOLE DUE PROCESS,
25 MY CIVIL RIGHTS HAVE BEEN VIOLATED. COUNSEL HAS FAILED
26 TO NOTIFY THE COURTS. I HAVE CALLED THE CALIFORNIA
27 STATE BAR AND HAVE REPORTED MR. ADAIR TO THE STATE BAR.
28 AND I HAVE A CARD WITH THE NUMBER ON IT THAT I RECEIVED

1 COMPLAINTS.

2 SO, NUMBER ONE, ALMOST OF ALL THESE ISSUES

3 EXCEPT POSSIBLY THE CONFLICT OF INTEREST RELATING TO THE

4 RESTRAINING ORDER -- WHICH I'LL HAVE MR. ADAIR ADDRESS

5 IN A MOMENT -- ~~THAT ARE UNTIMELY IT ALSO WOULD~~

6 ~~RESULT IN AN ENDLESS DELAY OF THIS TRIAL TO DISRUPT THE~~

7 ~~TRIAL BY PLACING NEW COUNSEL IN THE MIDDLE OF TRIAL.~~

8 ~~THAT'S ALL I NEED TO CONSIDER IN EVALUATING YOUR MOTION.~~

9 ~~THE DISCOVERY ISSUE YOU RAISED WAS SOMETHING~~

10 ~~THAT WOULD HAVE BEEN KNOWN PRIOR TO TRIAL, AND YOU COULD~~

11 ~~HAVE RAISED A MARSDEN MOTION PRIOR TO TRIAL.~~

12 ~~DISCOVERY ISSUE, IT WOULD BE A VALUED MOTION TO BRING~~

13 ~~WHICH I HAVE DOUBTS ABOUT BECAUSE, WHILE I'M DEALING WITH~~

14 ~~THE ENFORCEMENT OF THE ACTUAL MOTORS IN THIS CASE.~~

15 ~~THE ENFORCEMENT OF THE ACTUAL MOTORS IN THIS CASE.~~

16 ~~THE 1260 WOULD, YOUR ATTORNEY, IN GOOD FAITH, I~~

17 ~~BELIEVE, RAISED A CONCERN OR A DOUBT ABOUT YOUR ATTORNEY~~

18 ~~CAPACITY TO STAND UP IN AND THE COURT FOLLOWING THE~~

19 ~~SLAW, BUT THAT THE COURT WOULD NOT QUESTION THAT~~

20 ~~AN EVALUATION SHOULD TAKE PLACE, BUT YOU WERE~~

21 ~~FOUND COMPETENT AND NOT IN A POSITION TO BE ADOPTED.~~

22 ~~THE COURT I HAVE RULED APPROPRIATELY ON ANY PRIOR~~

23 ~~MOTIONS THAT YOU RAISED. THERE INITIALLY HAD BEEN AN~~

24 INDICATION THAT YOU WOULD WANT TO FILE PRO PER, BUT THEN

25 YOU ASKED TO RAISE A MARSDEN MOTION FIRST. I HEARD THAT

26 MOTION. I RULED ON IT.

27 PRO PER MOTION. YOU HAVE HAD OTHER HEARINGS IN FRONT OF

28 JUDGE EXARHOS, AND I DON'T KNOW WHAT HE HAS DONE OR

1 RULED ON. ~~BUT EVERYTHING THAT HAS COME BEFORE THAT~~
~~2 I FEEL IT PROPERLY RULED UPON.~~

3 I THINK THAT YOU INDICATED YOU MIGHT BRING
 4 ANOTHER PRO PER MOTION ON THE DAY THAT WE DECIDED TO
 5 REFER YOU OUT FOR 1368 PROCEEDINGS. ~~6~~

~~6 TO MAKE THE COURT COME TO THE COURT IN AN ADVISORY~~

~~7 ONE OF THE PROCEEDINGS HAS BEEN MADE IN THE PROCEEDINGS~~

~~8 THE COURT HAS MADE THE PROCEEDINGS IN THE PROCEEDINGS~~

9 ~~THE COURT HAS MADE THE PROCEEDINGS IN THE PROCEEDINGS~~. IT WAS THE COURT'S RULING ON HOW
 10 TO PROCEED.

~~11 THE COURT HAS MADE THE PROCEEDINGS IN THE PROCEEDINGS~~

12 ~~DISAGREEMENT OVER STRATEGY FOR WHICH WITNESSES TO CALL~~

13 ~~NOT A BASIS TO RELIEVE COUNSEL~~

14 ~~THE ISSUE REGARDING THE PROSECUTION LETTERS~~

15 ~~ABOUT BREONAY~~

16 ~~BEFORE THE COURT BY THE COURT WORK AND A COURT~~

17 ~~REASON TO RELIEVE COUNSEL.~~

18 THE CHARGES -- ~~THE CHARGES~~. THERE WAS A
 19 SECOND AMENDED COMPLAINT, AND IT WAS RAISED AND NOTICE
 20 GIVEN TO YOUR ATTORNEY PRIOR TO TRIAL. AGAIN, I DON'T
 21 SEE ANY BASIS IN THAT ISSUE TO RELIEVE HIM.

22 THE FRUIT-OF-THE-POISONOUS-TREE ARGUMENT --

~~23 AGAIN, THAT WAS A PRELIMINARY ISSUE THAT WAS TOO LATE~~

~~24 TO BE RAISED IN COURT.~~

25 SO THE ONLY ISSUE I BELIEVE THAT I MAY NEED
 26 SOME INPUT ON TO PERHAPS BETTER UNDERSTAND THE CONCERN
 27 IS AN ISSUE RAISED THAT SOMEHOW THIS COURT IS A WITNESS
 28 OR HAS KNOWLEDGE ABOUT THE TRO PROCEEDINGS. ~~THE COURT~~

1 [REDACTED]

2 [REDACTED]

3 MR. ADAIR, DO YOU HAVE ANY ADDITIONAL
4 INFORMATION OR BACKGROUND ON THAT ISSUE?

5 MR. ADAIR: I BELIEVE YOU DID SIGN SOME OTHER
6 DOCUMENTS IN THE CASE.

7 THE COURT: [REDACTED] THE TRO BETWEEN
8 MR. BURTON AND MR. THOMAS, [REDACTED]

9 MR. ADAIR: [REDACTED]
10 [REDACTED] IT LOOKS LIKE YOU SIGNED THE NOTICE
11 [REDACTED]

12 THE COURT: [REDACTED]
13 OSC HEARING?

14 MR. ADAIR: THAT'S CORRECT.

15 THE COURT: OKAY. ALL RIGHT. [REDACTED]
16 SEE ANY REASON WHY ANY INVOLVEMENT I HAD IN A FAMILY LAW
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 DUE TO THIS COURT'S INVOLVEMENT IN THAT CASE.

21 MR. ADAIR: THE OTHER THING ABOUT IT IS THAT
22 IT APPEARS THAT ANYTHING THAT YOU -- IF YOU WERE TO HAVE
23 BEEN A WITNESS, IT'S RELEVANT ISSUES IN THIS MATTER THAT
24 THE DOCUMENTS THEMSELVES COULD BE USED RATHER THAN
25 YOURSELF. [REDACTED]
26 CONFLICT. [REDACTED]
27 [REDACTED]

28 THE COURT: ALL RIGHT.

1 MR. ADAIR: MR. BURTON WOULD LIKE TO ADDRESS
2 THE COURT AGAIN.

3 THE COURT: ALL RIGHT. MR. BURTON, YOU MAY
4 ADDRESS ME IN PARTICULAR WITH REGARD TO THE ISSUE THAT
5 MR. ADAIR JUST ADDRESSED ON THE RESTRAINING ORDER OR THE
6 CUSTODY MATTER.

7 ~~MR. ADAIR: I DON'T WANT TO ADDRESS THAT. I WANT~~
8 ~~TO ADDRESS THE CUSTODY MATTER. I WANT TO ADDRESS THE~~
9 ~~CUSTODY MATTER. I WANT TO ADDRESS THE CUSTODY MATTER.~~

10 THE COURT: ALL RIGHT. GO AHEAD.

11 THE DEFENDANT: YES, MA'AM.

12 ~~JUDGE BURTON: I WANT TO ADDRESS THE CUSTODY MATTER.~~
13 ~~THE COURT: I WANT TO ADDRESS THE CUSTODY MATTER.~~
14 ~~THE COURT: I WANT TO ADDRESS THE CUSTODY MATTER.~~
15 ~~THE COURT: I WANT TO ADDRESS THE CUSTODY MATTER.~~
16 ~~THE COURT: I WANT TO ADDRESS THE CUSTODY MATTER.~~
17 ~~THE COURT: I WANT TO ADDRESS THE CUSTODY MATTER.~~
18 YOU MAY REFER YOU TO THE COURT CLERK'S RECORDS.

19 ~~THE COURT: I WANT TO ADDRESS THE CUSTODY MATTER.~~
20 ~~THE COURT: I WANT TO ADDRESS THE CUSTODY MATTER.~~
21 ~~THE COURT: I WANT TO ADDRESS THE CUSTODY MATTER.~~
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27 ~~THE COURT: I WANT TO ADDRESS THE CUSTODY MATTER.~~
28 ~~THE COURT: I WANT TO ADDRESS THE CUSTODY MATTER.~~

*Errors as
Court of Appeals
Harrisburg*

~~28 - ADDITIONAL ATTACHMENTS - 1 SKILLING~~